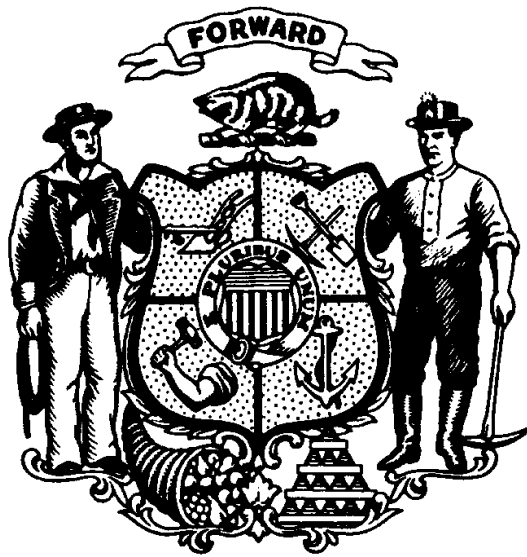


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EMERGENCY RULES NOW IN EFFECT

Under s. 227.24, Stats., state agencies may promulgate rules without complying with the usual rule-making procedures. Using this special procedure to issue emergency rules, an agency must find that either the preservation of the public peace, health, safety or welfare necessitates its action in bypassing normal rule-making procedures.

Emergency rules are published in the official state newspaper, which is currently the Wisconsin State Journal. Emergency rules are in effect for 150 days and can be extended up to an additional 120 days with no single extension to exceed 60 days.

Extension of the effective period of an emergency rule is granted at the discretion of the Joint Committee for Review of Administrative Rules under s. 227.24 (2), Stats.

Notice of all emergency rules which are in effect must be printed in the Wisconsin Administrative Register. This notice will contain a brief description of the emergency rule, the agency finding of emergency, date of publication, the effective and expiration dates, any extension of the effective period of the emergency rule and information regarding public hearings on the emergency rule.

EMERGENCY RULES NOW IN EFFECT (3)

Agriculture, Trade & Consumer Protection

1. Rules adopted creating ss. **ATCP 10.68** and **11.58**, relating to fish farms and imports of live fish and fish eggs.

Exemption From Finding of Emergency

(1) The department of agriculture trade and consumer protection is adopting this emergency rule to implement s. 95.60, Stats., which was created by 1997 Wis. Act 27.

(2) Section 9104(3xr) of 1997 Wis Act 27 authorizes the department to adopt this emergency rule without the normal finding of emergency. It further provides that the emergency rule will remain in effect until January 1, 1999 or until a permanent rule takes effect, whichever comes first.

Analysis Prepared by the Department of Agriculture, Trade and Consumer Protection

Statutory authority: ss. 93.07(1), 95.60(4s)(e) and (5)

Statutes interpreted: s. 95.60

This emergency rule implements s. 95.60, Stats., by doing all of the following:

Establishing an interim procedure for registering fish farms in 1998. The department plans to adopt permanent rules, which may differ from this emergency rule, relating to registration of fish farms after 1998.

Establishing interim permit requirements for importing live fish or fish eggs into Wisconsin.

Requiring fish farm operators and fish importers to keep records.

Fish Farms

Registration

Under s. 95.60, Stats., as enacted by 1997 Wis. Act 27 effective October 14, 1997, the Department of Agriculture, Trade and Consumer Protection (DATCP) is responsible for registering fish farms in Wisconsin. The new annual registration program replaces an annual licensing program previously administered by the Department of Natural Resources (DNR).

DNR licensed more than 2000 fish farms for calendar year 1997. Fish farms previously licensed by DNR must now be registered with DATCP. DATCP's 1998 registration requirement takes effect immediately after DNR's 1997 license requirement expires.

Registration Procedures: General

This emergency rule establishes interim fish farm registration procedures. Under this emergency rule:

- No person may operate a fish farm without a DATCP registration certificate. A registration certificate expires on December 31, 1998.
- A registration certificate is effective on the day it is issued except that, if a fish farm operator licensed by DNR in 1997 files a renewal application with DATCP by April 10, 1998, the DATCP registration certificate is retroactive to January 1, 1998.
- Fish farm registrations are not transferable between persons or locations. A person who operates 2 or more fish farms at non-contiguous locations must obtain a separate registration certificate for each location.

Registration Categories

A fish farm operator must hold a type A, B, C or D registration certificate for that fish farm:

- A type A registration is normally required for a fish farm at which the operator does any of the following:
 - *Hatches fish or produces fish eggs at that fish farm for sale or trade to any person.
 - *Allows public fishing, for a fee, for fish hatched at that fish farm.
- A type B registration is normally required if the fish farm operator does any of the following and does not hold a type A registration:
 - *Allows public fishing at the fish farm for a fee.
 - *Sells or trades fish, from the fish farm, to any person.
- A type C registration authorizes the registrant to operate a fish farm. It does not authorize activities for which a type A or B registration is required, except that a type C registrant may do either of the following without a type A or B registration:
 - *Sell minnows to any person
 - *Sell fish or fish eggs to a type A registrant.
- A type D registration authorizes the registrant to sell or trade fish from a fish farm without a type A or B registration if all of the following apply:
 - *The operator does not hatch fish, produce fish eggs or permit public fishing for a fee at that fish farm.
 - *The fish farm consists solely of ponds used to hold or grow fish.
 - *The operator holds a type A or B registration certificate for another fish farm located on a nonadjacent parcel of land.

Registration Fees

This emergency rule establishes the following registration fees:

- Type A registration \$50.00
- Type B registration \$25.00
- Type C registration \$ 5.00
- Type D registration \$ 5.00

School systems operating fish farms must register with DATCP but are exempt from fees. The operator of a fish farm registered for less than a full year must pay the full year's fee.

If an operator was licensed by DNR in 1997, but files a renewal application with DATCP after April 10, 1998, the operator must pay a late renewal fee equal to 20% of the registration fee or \$5.00, whichever is greater.

Deadlines for DATCP Action on Registration Applications

If a person licensed by DNR to operate a fish farm in 1997 applies to register that fish farm with DATCP, DATCP must grant or deny the application within 30 days after the applicant files a complete application, including the correct fee, with DATCP. DATCP will deny the application, if the applicant has not filed a 1997 "private fish hatchery annual report" with the department of natural resources.

If a person applying to register a fish farm was not licensed by the department of natural resources to operate that fish farm in 1997, DATCP must grant or deny that person's registration application within 30 days after all of the following occur:

- The applicant files a complete application including the correct fee.
- DNR informs DATCP that DNR has approved the facility.

Recordkeeping

This emergency rule requires a fish farm operator to keep the following records for all fish and fish eggs which the operator receives from or delivers to another person:

- The name, address, and fish farm registration number if any, of the person from whom the operator received or to whom the operator delivered the fish or fish eggs.
- The date on which the operator received or delivered the fish or fish eggs.
- The location at which the operator received or delivered the fish or fish eggs.
- The size, quantity and species of fish or fish eggs received or delivered.

A fish farm operator must make these records available to DATCP, upon request, for inspection and copying.

Denying, Suspending or Revoking a Registration

DATCP may deny, suspend or revoke a fish farm registration for cause, including any of the following:

- Violating ch. 95, Stats., or applicable DATCP rules.
- Violating the terms of the registration
- Preventing a DATCP employee from performing his or her official duties, or interfering with the lawful performance of those duties.
- Physically assaulting a DATCP employee performing his or her official duties.
- Refusing or failing, without just cause, to produce records or respond to a DATCP subpoena.
- Paying registration fees with a worthless check.

Fish ImportsImport Permit Required

This rule prohibits any person from importing into this state, without a permit from DATCP, live fish or fish eggs for any of the following purposes:

- Introducing them into the waters of the state.
- Selling them as bait, or for resale as bait.

- Rearing them at a fish farm, or selling them for rearing at a fish farm.

A copy of the import permit must accompany every import shipment. An import permit may authorize multiple import shipments. There is no fee for an import permit. A person importing a non-native species of fish or fish eggs must also obtain a permit from the department of natural resources.

Import Permit Contents

An import permit must specify all of the following:

- The expiration date of the import permit. An import permit expires on December 31 of the year in which it is issued, unless DATCP specifies an earlier expiration date.
- The name, address and telephone number of the permit holder who is authorized to import fish or fish eggs under the permit.
- The number of each fish farm registration certificate, if any, held by the importer.
- Each species of fish or fish eggs which the importer is authorized to import under the permit.
- The number and size of fish of each species, and the number of fish eggs of each species, that the importer may import under the permit.
- The purpose for which the fish or fish eggs are being imported.
- The name, address and telephone number of every source from which the importer may import fish or fish eggs under the permit.
- The name, address, telephone number, and fish farm registration number if applicable, of each person in this state who may receive an import shipment under the permit if the person receiving the import shipment is not the importer.

Applying for an Import Permit

A person seeking an import permit must apply on a form provided by DATCP. The application must include all of the following:

- All of the information which must be included in the permit (see above).
- A health certificate for each source from which the applicant proposes to import fish or fish eggs of the family salmonidae.

DATCP must grant or deny a permit application within 30 days after it receives a complete application and, in the case of non-native fish DNR approval.

Denying, Suspending or Revoking an Import Permit

DATCP may deny, suspend or revoke an import permit for cause, including any of the following:

- Violating applicable statutes or rules.
- Violating the terms of the import permit, or exceeding the import authorization granted by the permit.
- Preventing a department employee from performing his or her official duties, or interfering with the lawful performance of his or her duties.
- Physically assaulting a department employee while the employee is performing his or her official duties.
- Refusing or failing, without just cause, to produce records or respond to a department subpoena.

Import Records

A person importing fish or fish eggs must keep all of the following records related to each import shipment, and must make the records available to the department for inspection and copying upon request:

- The date of the import shipment.
- The name, address and telephone number of the source from which the import shipment originated.
- The name, address, telephone number, and fish farm registration number if applicable of the person receiving the import shipment, if the person receiving the import shipment is not the importer.
- The location at which the import shipment was received in this state.
- The size, quantity and species of fish or fish eggs included in the import shipment.

Salmonidae Import Sources: Health Certificates

DATCP may not issue a permit authorizing any person to import fish or fish eggs of the family salmonidae (including trout, salmon, grayling, char, Dolly Vardon, whitefish, cisco or inconnu) unless a fish inspector or an accredited veterinarian certifies, not earlier than January 1 of the year preceding the year in which the applicant applies for the permit, that the fish and fish eggs from the import source were determined to be free of all of the following diseases:

- Infectious hematopoietic necrosis.
- Viral hemorrhagic septicemia.
- Whirling disease, except that eggs from wild stocks need not be certified free of whirling disease.
- Enteric redmouth.
- Ceratomyxosis.

A fish inspector issuing a health certificate must be a fish biologist who is certified, by the American Fisheries Society or the state of origin as being competent to perform health inspections of fish.

The accredited veterinarian or fish inspector must issue a health certificate in the state of origin, based on a personal inspection of the fish farm from which the import shipment originates. In the inspection, an accredited veterinarian or a fish inspector must examine a random statistical sample of fish drawn from each lot on the fish farm. From each lot, the veterinarian or inspector must examine a number of fish which is adequate to discover, at the 95% confidence level, any disease that has infected 5% of the lot.

Publication Date: March 16, 1998
Effective Date: March 16, 1998
Expiration Date: See section 9104 (3xr) 1997 Wis. Act 27
Hearing Date: April 27, 1998

2. Rules adopted amending ss. **ATCP 81.50 (2), 81.51 (2), and 81.52 (2)**, relating to grade standards for colby and monterey (jack) cheese.

Finding of Emergency

The state of Wisconsin department of agriculture, trade and consumer protection (DATCP) finds that an emergency exists and that an emergency rule is necessary for economic reasons to protect the public welfare of the citizens of Wisconsin. The facts constituting the emergency are as follows:

(1) DATCP has adopted standards for grades of cheese manufactured and sold in Wisconsin under s. 97.177, Stats., and ch. ATCP 81, Wis. Adm. Code. Any cheese which carries a state grade mark must conform to the standards and characteristics of the labeled grade.

(2) Under current rules, colby and monterey (jack) cheese must contain numerous mechanical openings in order to be labeled or sold as Wisconsin certified premium grade AA or Wisconsin grade A (Wisconsin state brand).

(3) Changes in cheese manufacturing technology, packaging and equipment have made it extremely difficult for many processors and packagers to achieve the numerous mechanical openings or open body character required by these top two grade categories. A majority of today's wholesale buyers and packagers prefer a closed body cheese for a variety of reasons, including ease of shredding and the ability to package "exact-weight" pieces with minimal variation and waste.

(4) Currently, a closed body cheese may be labeled or sold as Wisconsin grade B or "not graded." It cannot be labeled or sold as Wisconsin certified premium grade AA or Wisconsin grade A (Wisconsin state brand), nor can it command the premium price associated with these top two grade categories.

(5) Wisconsin is the only state with its own grade standards for colby and monterey (jack) cheese. The United States Department of Agriculture modified its grade standards for colby and monterey jack cheese in 1995 and 1996, respectively, in response to industry requests to allow an open or closed body. Buyers who cannot obtain the desired graded product in Wisconsin will likely switch to suppliers from other states. Once customers are lost they are difficult to regain.

(6) Wisconsin's dairy industry plays a major role in our state's economy. Approximately \$3 billion or 90% of Wisconsin's milk production goes into the manufacture of cheese. Lost business revenues harm the dairy industry, cause increased unemployment, and have a negative impact on the state's economy.

(7) Pending the adoption of rules according to the normal administrative rulemaking procedures, it is necessary to adopt emergency rules under s. 227.24, Stats. to protect the public welfare based on an economic emergency for the state's dairy industry and the subsequent impact on the general economy and citizens of this state.

Publication Date: August 8, 1998
Effective Date: August 8, 1998
Expiration Date: January 4, 1999
Hearing Date: September 14, 1998
Extension Through: March 4, 1999

3. Rules were adopted creating ss. **ATCP 10.68 and 11.58**, relating to fish farms and imports of live fish.

Finding of Emergency

(1) This emergency rule implements s. 95.60, Stats., which was created by 1997 Wis. Act 27.

(2) Under s. 95.60, Stats., a person who operates a fish farm must register annually with the Wisconsin department of agriculture, trade and consumer protection (DATCP). A person who imports live fish or fish eggs into Wisconsin must meet fish health requirements and obtain an import permit from DATCP. DATCP must establish registration and import permit standards by rule.

(3) On December 9, 1998, the Board of Agriculture, Trade and Consumer Protection (DATCP Board) approved final draft "permanent" rules to implement s. 95.60, Stats. Among other things, the rules establish fish farm registration standards and fish import standards. Before DATCP may adopt these final draft "permanent" rules, it must submit them for legislative committee review under s. 227.19, Stats. DATCP must then adopt and file the rules under s. 227.20, Stats., and publish them under s. 227.21, Stats. As a result, the final draft "permanent" rules will not take effect for several months.

(4) Current fish farm registration certificates will expire on December 31, 1998, before the final draft "permanent" rules take effect. The department must adopt a temporary emergency rule so it can process registration renewals pending the effective date of the final draft "permanent" rules. This emergency rule adopts, on a temporary basis, registration provisions contained in the department's proposed final draft "permanent" rules.

(5) This emergency rule also adopts, on a temporary basis, rules to prevent imports of diseased live fish and fish eggs that threaten the health of fish in Wisconsin fish farms and the Wisconsin natural environment. These temporary import requirements are based on requirements previously administered by the Wisconsin department of natural resources (DNR). The final draft "permanent" rules, when adopted, will expand upon these interim requirements.

(6) This emergency rule is needed to protect the public peace, health safety and welfare. Without this rule, DATCP would not be able to process fish farm registrations for 1999, or issue permits for live fish imports. Without the protections afforded by this emergency rule, Wisconsin fish farms and wild fisheries would also be exposed to an unnecessary risk of disease.

Publication Date: December 28, 1998

Effective Date: December 28, 1998

Expiration Date: May 27, 1999

Hearing Date: February 3, 1999

[See Notice this Register]

EMERGENCY RULES NOW IN EFFECT

Commerce

(Flammable & Combustible Liquids, Ch. Comm10)

Rules adopted revising **ch. Comm 10**, relating to regulation of flammable and combustible liquids.

Finding of Emergency

The Department of Commerce finds that an emergency exists and that adoption of a rule is necessary for the immediate preservation of public health, safety, welfare and the environment.

The facts constituting the emergency are as follows. Under ss. 101.09, 101.142 and 101.144, Stats., the Department protects public health, safety, welfare and the environment by promulgating rules for and administering the regulation of petroleum product storage tank systems and the storage and handling of flammable and combustible liquids. The purpose of the regulatory effort is to guarantee that storage tank systems and their contents are managed in a manner that is protective of life safety and the environment.

On December 22, 1998, a ten-year upgrade deadline comes to an end, and all tank systems falling under the United States Environmental Protection Agency's rules are required to have been upgraded to comply with new and environmentally protective construction standards. After the final compliance date, the Department and its contracted agents will conduct inspections to guarantee that tank systems which are not in compliance have been shut down in accordance with state and federal rules. In those instances where owners or operators have not complied with the upgrade or shutdown requirements, immediate action must be taken to either prevent the tank systems from continuing to be used or prevent the delivery of additional petroleum product to the systems.

The shut down of noncomplying tank systems is a core environmental and financial issue. The tank systems that are not in compliance pose a continuing high-risk threat to the environment, and delay in action will continue an unnecessary environmental hazard. Additionally, new releases from these non-upgraded tank systems will add to the financial burden of the PECFA program, which is significantly over-subscribed. The rule included with this

order is in response to environmental issues associated with non-upgraded tank systems.

Publication Date: December 11, 1998

Effective Date: December 11, 1998

Expiration Date: May 10, 1999

EMERGENCY RULES NOW IN EFFECT

Commerce

(Petroleum Environmental Cleanup Fund Interagency Responsibilities, Ch. Comm 46)

Rules were adopted creating **ch. Comm 46**, relating to the Petroleum Environmental Cleanup Fund Interagency Responsibilities.

Finding of Emergency

The Department of Commerce finds that an emergency exists and that adoption of a rule is necessary for the immediate preservation of public health, safety, and welfare.

The facts constituting the emergency are as follows. Under ss. 101.143 and 101.144, Stats., the Department protects public health, safety, and welfare by promulgating rules for and administering the Petroleum Environmental Cleanup Fund (PECFA Fund). The purpose of the fund is to reimburse property owners for eligible costs incurred because of a petroleum product discharge from a storage system or home oil tank system. In administering this fund, the Department has relied upon a Memorandum of Understanding with the Department of Natural Resources for classifying contaminated sites, disbursing funds, and addressing other statements of policy that affect the two Departments.

On September 17, 1998, the Joint Committee for Review of Administrative Rules adopted a motion pursuant to s. 227.26(2)(b), Stats., that directs the Department and the Department of Natural Resources to jointly adopt the above portions of the Memorandum of Understanding and related policy issues as an Emergency Rule. The rule included with this order is in response to that directive.

Publication Date: January 1, 1999

Effective Date: January 1, 1999

Expiration Date: May 31, 1999

EMERGENCY RULES NOW IN EFFECT

Commerce

(Rental Unit Energy Efficiency, Ch. Comm 67)

Rules were adopted revising **ch. Comm 67**, relating to rental unit energy efficiency.

Finding of Emergency

The Department of Commerce finds that an emergency exists and that adoption of a rule is necessary for the immediate preservation of public health, safety, and welfare.

The facts constituting the emergency are as follows. Under s. 101.122, Stats., Department protects public health, safety, and welfare by promulgating energy efficiency requirements for rental units. 1997 Wis. Act 288 amends s. 101.122, Stats., to change the scope of the rules that the Department develops under that law. Those portions of the Act were effective the day after publication, and the rules adopted by the Department under the authority of that law are hereby amended to be consistent with 1997 Wis. Act 288.

This emergency rule excludes the following buildings from the rental unit energy efficiency

- Buildings of one or two rental units that were constructed after December 1, 1978.
- Buildings of three or more rental units that were constructed after April 15, 1976.
- Condominium buildings of three or more dwelling units.

This rule also limits the application of rental unit energy efficiency requirements to the following items:

- Attics
- Furnaces and boilers
- Storm windows and doors, with an option to meet an air infiltration performance standard for the thermal envelope of the building
- Sill boxes
- Heating and plumbing supply in unheated crawlspaces
- Shower heads

This rule also eliminates the expiration of the certificate of code compliance after 5 years.

Publication Date: June 30, 1998
Effective Date: June 30, 1998
Expiration Date: November 27, 1998
Hearing Date: August 14, 1998
Extension Through: January 25, 1999

EMERGENCY RULES NOW IN EFFECT

Commerce

(Financial Resources for Communities, Chs. Comm 105 to 128)

Rules adopted creating **ch. Comm 118**, relating to the Wisconsin Promise Challenge Grant Program.

Finding of Emergency

On July 16, 1998, 1997 Wis. Act 237, took effect. The act created Section 1901(lz) which appropriated \$424,000 for fiscal year 1998-99 that may be awarded in the form of grants by the National and Community Service Board attached to the Department of Commerce to any countywide consortium. Countywide consortiums who agree to provide five fundamental resources intended to mentor, nurture, protect, teach and serve persons under the age of 26 years are eligible to receive Wisconsin Promise Challenge Grants. The amount of the grant ranges from \$3,000 to \$15,000, depending on the number of underserved youth who are to receive the five fundamental resources. In order to be eligible, the grant recipient is required to match the grant, in cash, in an amount that is not less than twice the amount of the grant money received. In addition the law, specifies conditions on the use of the grant monies and requires documentation on the number of underserved youths who received the five fundamental resources and the positive outcomes and result of those efforts. Since funds are only available for this fiscal year and the law sunsets on January 1, 2000, the Department is promulgating an emergency rule in order to make these funds and the grant program available as quickly as possible so counties may provide the five fundamental resources to underserved youth.

This emergency rule was developed in consultation with the National and Community Service Board, the Department of Health and Family Services and the Department of Administration.

Publication Date: September 12, 1998
Effective Date: September 12, 1998
Expiration Date: February 9, 1999
Hearing Date: November 30, 1998

EMERGENCY RULES NOW IN EFFECT (3)

Department of Corrections

1. Rules were adopted amending **s. DOC 328.21**, relating to absconders.

Finding of Emergency

The Department of Corrections finds that an emergency exists and that a rule is necessary for the immediate preservation of the public safety. A statement of the facts constituting the emergency is: A recent legislative enactment providing funding for the Department of Corrections to create an absconder unit in southeastern Wisconsin. Currently there are 7,694 probationers or parolees that have absconded from community supervision. To make community supervision more meaningful and promote accountability among offenders the legislature directed the Department of Corrections to make efforts to locate and apprehend offenders that have absconded from community supervision. The current administrative rule allows the Department of Corrections to search an offenders residence only for contraband. This rule amendment allows a search of an offender's residence for contraband or an offender.

Publication Date: December 3, 1998
Effective Date: December 3, 1998
Expiration Date: May 2, 1999

2. Rules were adopted revising **ch. DOC 349**, relating to holding juveniles in municipal lockup facilities.

Finding of Emergency

The Department of Corrections finds that an emergency exists and that rules are necessary for the immediate preservation of public safety. A statement of the facts constituting the emergency is: A recent session law, 1997 Wis. Act 296, created s. 938.209(2m), Stats., which permits the holding of juveniles in municipal lockup facilities if the facilities meet certain criteria. This act took effect on July 1, 1998. A municipal lockup facility may only hold juveniles who are alleged to have committed a delinquent act if the department of corrections approves the facility for the holding of juveniles. In addition, the lockup facility may only hold the juvenile for no more six hours. Also, there must be sight and sound separation between any juveniles and adults being held in the lockup. Finally, the lockup facility may only hold the juvenile for investigative purposes.

Under current rule a municipal lockup facility may not hold juveniles. The act authorizes the department of corrections to promulgate rules establishing minimum requirements for the approval of a municipal lockup facility as a suitable place for holding juveniles who are alleged to have committed a delinquent act and for the operation of the facility. The permanent rule process has been started. However, the permanent rule process will take approximately nine months to complete. Emergency rules are necessary to establish an approval process and operational standards for the safety of the public and juveniles while permanent rules are being developed.

This order:

1. Adopts the statutory definitions of adult, delinquent, and juvenile.
2. Defines the term secure custody status.
3. Establishes the authority and purpose of establishing minimum standards for the holding of juveniles in municipal lockup facilities.
4. Prohibits the holding of juveniles in municipal lockup facilities, except if the juvenile is alleged to have committed a delinquent act.
5. Requires that the lockup facility provide juveniles notification of policies and procedures of the facility regarding the holding of juveniles and facility programs, including health screening and care, suicide prevention, control and administration of medications, and communicable disease control.

6. Provides that only juveniles who are alleged to have committed a delinquent act may be held in a municipal lockup facility.

7. Provides that juveniles who are alleged to have committed a delinquent act may be placed in secure custody status for a period of time not to exceed 6 hours.

8. Provides that the lockup administrator shall develop and implement policies and procedure to ensure sight and sound separation between juveniles and adults who are being held in the lockup facility.

9. Provides that lockup facility staff shall physically observe juveniles at least once every 20 minutes at irregular intervals and shall document the observations. If the juvenile is identified by the facility staff as being at risk (for example, suicidal tendency, under the influence of drugs or alcohol, or mental disturbance) the observations shall be at least once every 15 minutes at irregular intervals.

10. Requires that juvenile records be maintained in a confidential manner and kept separate from adult records, in accordance with s. 938.396, Stats.

The order provides for including in chapter DOC 349, Municipal Lockup Facilities, the rules for holding juveniles who are alleged to have committed a delinquent act.

Publication Date: December 10, 1998

Effective Date: December 10, 1998

Expiration Date: May 9, 1999

- Rules adopted creating **ch. DOC 330**, relating to pharmacological treatment of serious child sex offenders.

Finding of Emergency

The Department of Corrections finds that an emergency exists and that a rule is necessary for the immediate preservation of the public peace, health, safety or welfare. A statement of the facts constituting the emergency is: A recent session law, 1997 Wis. Act 284, created s. 304.06(1q) Stats., which will become effective January 1, 1999, and authorizes the department to require pharmacological treatment (chemical castration) for certain child sex offenders as a condition of probation or parole to accomplish the objectives of protection of the public or treatment of serious child sex offenders. Pharmacological intervention cannot begin without administrative rules. Development and promulgation of permanent rules will take approximately six months to complete. Emergency rules are necessary to implement the program for the safety of the public while permanent rules are being developed.

Publication Date: January 1, 1999

Effective Date: January 1, 1999

Expiration Date: May 31, 1999

EMERGENCY RULES NOW IN EFFECT

Financial Institutions

(Division of Banking)

Rules adopted renumbering and revising **ch. RL 41** to be **ch. DFI-Bkg 41**, relating to mortgage banking.

Exemption From Finding of Emergency

Statutory Authority: ss. 224.72 (8) and 224.73 (3); and 1997 Wis. Act 145, Section 72.

This emergency rule sets forth the registration and renewal of registration fees for mortgage bankers, loan originators and mortgage brokers; the transfer fee for loan originators; and the

registration periods for all registrations and renewals of registrations.

Publication Date: December 4, 1998

Effective Date: December 4, 1998

Expiration Date: May 3, 1999

EMERGENCY RULES NOW IN EFFECT (3)

Health & Family Services

(Management, Technology & Finance,

Chs. HFS 1--)

(Health, Chs. HFS 110--)

- Rules adopted creating **ch. HFS 13** and revising **ch. HSS 129**, relating to reporting and investigating caregiver misconduct.

Finding of Emergency

The Department of Health and Family Services finds that an emergency exists and that the rules included in this order are necessary for the immediate preservation of the public peace, health, safety or welfare. The facts constituting the emergency are as follows:

Since July 1, 1991, the Department has had rules, s. HSS 129.10, which establish and provide for the maintenance of a registry of persons eligible by training and testing to be employed in Wisconsin as nurse assistants working in hospitals, nurse assistants working in nursing homes, home health agency aides and, since October 1, 1991, hospice program aides. The rules implemented s. 146.40 (4g), Stats. The rules were amended by emergency order effective April 1, 1992, to add to the registry, as directed by s. 146.40 (4g) and (4r), Stats., all substantiated findings of allegations that persons working in any of these caregiver capacities had abused or neglected a resident or patient or misappropriated a resident's or patient's property, and making that information available to prospective employers and other interested persons on request.

This rulemaking order amends ch. HFS 129 to take out of it the misconduct part of the current registry, that is, the part consisting of substantiated findings of misconduct toward clients by caregivers working as nurse aides in hospitals or nursing homes or for home health agencies or hospice programs, and to include that part in a new ch. HFS 13 created by this order.

A recent session law, 1997 Wis. Act 27, amended s. 146.40 (4g) and (4r), Stats., to provide for expansion of the misconduct part of the registry so that, beginning October 1, 1998, the Department would add to the registry substantiated findings of allegations that any other person employed by or under contract with a hospital, nursing home, home health agency or hospice program or any person employed by or under contract with any of several other types of facilities, agencies and programs or services licensed, certified or registered by the Department abused or neglected a client served by the facility, agency or program or service or misappropriated a client's property. The other types of "entities" covered by the expanded misconduct part of the registry and the reporting, review and investigation, entering findings and appeal procedures under s. 146.40 (4r), Stats., are the following: community-based residential facilities, residential care apartment complexes (formerly called assisted living facilities), certified adult family homes (only if certified by the Department), licensed adult family homes (only if licensed by the Department), certified community mental health and substance abuse programs or services, rural medical centers and ambulance service providers.

The new ch. HFS 13 covers the structure of the misconduct part of the caregiver registry, the information included in it and release of registry information; a requirement that an entity upon learning of an incident of alleged caregiver misconduct take whatever measures are necessary to protect clients pending a finding;

mandatory reporting by entities of allegations of caregiver misconduct, with penalties for failure to report incidents; reporting by other persons; review by the Department of reports received from entities and concerned individuals alleging abuse or neglect of a client or misappropriation of a client's property, and follow-up investigation by the Department as necessary; determination by the Department either that an allegation is or is not substantiated, and notice to the subject of the report, if an allegation is substantiated, that the finding will be entered on the misconduct part of the caregiver misconduct registry, and the consequences of that action (which for some persons employed by or under contract with an entity may mean being barred indefinitely from similar employment and for others being barred from similar employment unless rehabilitation is demonstrated), unless he or she contests that determination by requesting a hearing; notice to the subject of a report that if the finding is included in the registry, he or she may add a rebuttal statement which will be included with the finding; and how to request a hearing, how the hearing will be conducted and the hearing decision.

This order creating ch. HFS 13 and amending ch. HSS 129 is being published as an emergency rulemaking order to take effect on October 1, 1998. That is the date on which the amendments to s. 146.40 (4g) and (4r), Stats., that expand the misconduct part of the registry will take effect. The rules are necessary for implementation of the amended statutes. The intent of the amended statutes and new rules is to better protect clients of the specified Department-regulated facilities, agencies, programs and services from being harmed. The rules are being published as emergency rules so that they can go into effect when the amended statutes take effect rather than up to 9 months later which is how long it will take to promulgate permanent rules.

Publication Date: October 1, 1998
Effective Date: October 1, 1998
Expiration Date: February 28, 1999
Hearing Dates: January 12, 20 & 26, 1999

2. Rules adopted creating **ch. HFS 12**, relating to caregiver background checks.

Finding of Emergency

The Department of Health and Family Services finds that an emergency exists and that rules are necessary for the immediate preservation of the public peace, health, safety or welfare. The facts constituting the emergency are as follows:

Sections 48.685 and 50.065, Stats., recently created by 1997 Wisconsin Act 27, apply to the Department in its functions of licensing, certifying, registering or approving some persons to provide care or treatment to other persons; to county social service and human service departments that license foster homes or treatment foster homes for children and carry out adoption home studies; to private child-placing agencies licensed to do the same; and to school boards that contract for day care programs under s. 120.13(14), Stats. The law also applies to the entities licensed, certified, registered or approved and their employees or contracted service providers.

An agency is prohibited from licensing, certifying, registering or approving a person if the agency knew or should have known that the person has been convicted of, or has a pending charge for, a serious crime, is found to have abused or neglected a client or child or to have misappropriated a client's property; or is required to be credentialed by the Department of Regulation and Licensing (DRL) but whose credential is not current or is limited so as to prevent the provision of adequate client care. Similarly, entities planning to hire or contract with a person expected to have access to clients or children may not hire or contract with the person if the entity knew or should have known of the existence of a prohibited condition.

With respect to a person applying for a license to operate an entity or for approval to reside at an entity, an agency is required to obtain a criminal history search, information contained in the Department's caregiver misconduct registry, DRL information regarding

credential status, if applicable, and Department information regarding any substantiated reports of child abuse or neglect and licensing history information. That information must also be obtained by entities for prospective employees and contractors.

The Department is required to develop a background information form and provide it to any regulated or approved person, and a county department and licensed child-placing agency is required to provide it to a foster home or treatment foster home applicant or pre-adoptive applicant and a school board is to provide the Department's background information form to any proposed contracted day care applicant or provider under s. 120.13 (14), Stats. Likewise, an entity is to provide the background information form to any employee or prospective employee having or expected to have access to any of its clients. If the background information form returned to an entity by an employee or prospective employee indicates that the person is not ineligible to be employed or contracted with or permitted to reside at an entity for a reason specified under the statutes or as provided in rule, an entity may employ or contract with the person or permit the person to reside at the entity for not more than 60 days pending the receipt of background check information.

For some serious crimes that would otherwise bar a person from regulatory approval or from being employed by or under contract with or residing at an entity, the statutes permit a person convicted of a crime, provided certain conditions are met, to ask an agency for rehabilitation review, that is, for an opportunity to demonstrate that he or she is rehabilitated and so the bar can be lifted.

These are the Department's rules for administration of ss. 48.685 and 50.065, Stats., as created by Act 27 and amended by 1997 Wisconsin Act 237. The rules repeat the statutory requirements and add more detail for administering them, add procedures for handling rehabilitation review requests, add definitions for "serious crime" and "under the entity's control" and other pertinent definitions and add a crimes list as Appendix A.

The rules are being published by emergency order to take effect on October 1, 1998, the same date that the statutes they implement will take effect, rather than up to 9 months later which is how long it will take to promulgate permanent rules. The rules are necessary for implementation of the new statutes. The intent of the statutes and rules is to better protect clients of the regulated service providers from being harmed.

The new background check statutes and rules apply beginning October 1, 1998 to entities initially approved on or after that date, persons that entities hire or contract with on or after that date and nonclients who take up residence at an entity on or after that date. The statutes and rules apply beginning October 1, 1999 to entities initially approved prior to October 1, 1998, persons that entities hired or contracted with prior to October 1, 1998 and nonclients who lived at an entity prior to October 1, 1998.

Publication Date: October 1, 1998
Effective Date: October 1, 1998
Expiration Date: February 28, 1999
Hearing Dates: January 12, 20 & 26, 1999

3. Rules adopted amending **chs. HFS 12**, relating to background checks.

Finding of Emergency

The Department of Health and Family Services finds that an emergency exists and that the rules are necessary for the immediate preservation of the public peace, health, safety or welfare. The facts constituting the emergency are as follows:

The Department on October 1, 1998 published an emergency rulemaking order creating ch. HFS 12, relating to uniform procedures for checking the backgrounds of persons who apply to provide or are providing care or treatment to persons who need that care or treatment, and for barring persons because of specified convictions, findings or charges substantially related to the care of clients from operating a service provider organization, providing care or treatment to the clients of a service provider or otherwise having contact with the clients of a service provider. Chapter HFS

12 includes an appendix which consists of a list of crimes. Some of the listed crimes **permanently** bar a person who was ever convicted of the crime from receiving regulatory approval from the Department to provide care or treatment to vulnerable people; from being licensed by a county human service or social service department or by a private child-placing agency to operate a foster home for children; from contracting with a school board to provide a day care program; from being employed by or under contract to a service provider to provide care or treatment to the service provider's clients; and from residing as a nonclient at the service-providing entity. Others of the listed crimes temporarily bar a person convicted of the crime from doing any of those things, pending demonstration that the individual has been rehabilitated. While the remaining few crimes in the Crimes List, called "less serious crimes," do not bar a person with a conviction from providing care or treatment to others, they do require the regulatory agency or employer to impose special precautionary measures to ensure the protection of persons receiving care or treatment.

This order modifies the Crimes List published on October 1, 1998 as Appendix A to ch. HFS 12.

The original Crimes List consists of 159 crimes listed by statute number, 45 of which are permanent bar crimes for all programs. Some 105 crimes are rehabilitation review-eligible crimes (bar with rehab crimes), and 3 are less serious crimes (crimes of lesser significance than serious crimes). As for unlisted crimes, a regulatory agency, employer or contractor is supposed to consider whether conviction for any unlisted crime is substantially related to caregiving and, if so, can treat it as a permanent bar crime or a crime of lesser significance, and take action accordingly.

The modified Crimes List consists of 156 crimes listed by statute number, name and program sanction, 26 of which are permanent bar crimes for all programs. Some crimes have been moved from permanent bar status to bar with rehab status, crimes of lesser significance status or substantially related (unlisted) status, and some crimes have been moved from bar with rehab status to crimes of lesser significance status or substantially related (unlisted) status. The crimes of lesser significance are removed altogether from the Crimes List and made a separate list under s. HFS 12.11(5) (a) 3., so that the Crimes List is left with only "serious crimes."

The Department is modifying the Crimes List at this time because after publication of the original list, that is, as the Crimes List began to be used to make decisions about licensing or certifying service providers and hiring or contracting for caregiver staff, and especially in anticipation of agencies having to withdraw some current licenses and certifications and entities having to dismiss some current caregiver staff and terminate some caregiver contracts, Department staff heard from and met with many affected individuals and representatives of affected programs and discussed with them the need, reasonableness and practicality of categorizing some criminal convictions in ways they had been categorized. These discussions led the Department to reconsider the appropriateness of the sanctions for some of the specified crimes, in particular some of the crimes that the Department had designated permanent bar crimes. The Department also determined once the Crimes List began to be used that corrections and clarifications were needed in it.

The Department is modifying the ch. HFS 12 emergency rules by emergency order because of the critical importance of the appended Crimes List for proper implementation of the statutory caregiver background check requirements. Those requirements are directed at protecting people receiving care and treatment from being harmed. The revised Crimes List is part of the proposed permanent rules that

will replace the emergency rules, but the replacement permanent rules will not take effect until about June 1, 1999.

Publication Date: December 12, 1998
Effective Date: December 12, 1998
Expiration Date: May 11, 1999

EMERGENCY RULES NOW IN EFFECT

Health and Family Services (Community Services, Chs. 30--)

Rule was adopted amending s. HFS 94.24 (2)(e), relating to searches of rooms and personal belongings of patients at the Wisconsin Resources Center.

Finding of Emergency

The Department of Health and Family Services finds that an emergency exists and that the adoption of the rules included in this order is necessary for the immediate preservation of the public peace, health, safety or welfare. The facts constituting the emergency are as follows:

The Department operates the Wisconsin Resource Center near Oshkosh, a mental health treatment facility for two groups of people: (1) inmates of correctional institutions whose behavior presents a serious problem to themselves or others in state correctional facilities and whose mental health treatment needs can be met at the Center, and (2) persons who have been found by a court or jury under s. 980.05, Stats., to be sexually violent persons and who have therefore been committed to the custody of the Department under s. 980.06, Stats., for control, care and treatment, whose commitment order specifies institutional care and who have been placed by the Department at the Center under s. 980.065, Stats. About 60% of the 370 patients at the Center are inmates of correctional institutions and about 40% are persons committed to the Department under ch. 980, Stats.

The security, discipline, care and treatment of inmates of correctional institutions at the Wisconsin Resource Center are governed by administrative rules of the Wisconsin Department of Corrections. Chapter HFS 94, the Department's rules relating to the rights of patients receiving treatment for a mental illness, a developmental disability, alcohol abuse or other drug abuse, applies to the inmates of correctional institutions at the Center only in relation to patient rights specified in s. 51.61 (1) (a), (d), (f), (g), (h), (j) and (k), Stats. However, the entire ch. HFS 94 applies to patients at the Center who are there under a ch. 980, Stats., commitment.

At the Wisconsin Resource Center staff until recently have been making random searches of the rooms and personal belongings of patients who have been committed to the Department under ch. 980, Stats. A patient has challenged the practice in a lawsuit, claiming that it violates s. HFS 94.24 (2) (e) which permits a search only when there is documented reason to believe that security rules have been violated, unless the search is of rooms and belongings in a forensic unit. Patients at the Center who are there under ch. 980, Stats., commitments are not residents of a forensic unit; a commitment under ch. 980, Stats., is considered a civil commitment. The court handling the case is expected to rule in favor of the patient. Therefore, the Center has temporarily suspended random searches, pending amendment of the rule.

This order amends s. HFS 94.24 (2) (e) to permit searches of the rooms and personal belongings of not only inpatients of forensic

units but also inpatients of a secure mental health unit or facility under s. 980.065, Stats., and similar inpatients of the maximum security facility at the Mendota mental health institute, and not only when there is documented reason to believe that security rules have been violated but under other circumstances as well as specified in written facility policies. This change will permit the Wisconsin Resource Center to resume random searches of the rooms and personal belongings of patients who have been committed to the Department under ch. 980, Stats.

This rule change is being promulgated on the advice of counsel by emergency order because of the length of the permanent rulemaking process and because random searches of the rooms and belongings of ch. 980, Stats., patients at the Wisconsin Resource Center need to be resumed without delay to protect other patients and staff and, in the long run, the general public.

These patients have been committed or are being detained because there is probable cause to believe they are dangerous individuals who are disposed to commit future acts of sexual violence. Many have documented histories of other types of criminal activity, including fraud, theft and physical assault. Many also have a history of drug/alcohol dependence and gang activity. The intent of ch. 980, Stats., is to protect the public and provide treatment to this patient population. The major difference between this population and other patient populations is this population has a significantly higher percentage of individuals diagnosed with anti-social personality disorders and, as such, they have consistently shown deliberate disregard for the rights of others and a willingness to break the law.

The Wisconsin Resource Center is responsible for maintaining a therapeutic and safe environment for its patients. Yet the ch. 980 patients in general have consistently found 'creative' ways to break facility rules. Therefore, unless there are effective mechanisms, such as random searches, in place to monitor their activity, these patients will use their rights to continue their criminal activity and to violate the rights of others.

Random searches help the Center identify and prevent numerous violations of facility rules that are safety and security related or countertherapeutic to the patients. These searches can also deter patients from harboring dangerous items in their rooms. These could go undetected and be at some point used in harming another person or hinder or block the individual's treatment. They include weapons, drugs, indications of planning underway to rape or assault another patient or a staff member, sexually explicit material which may interfere with treatment progress, and stolen property including credit cards.

A facility cannot effectively treat these patients without the ability to effectively monitor and confront criminogenic behaviors and patterns. Random searches are a very effective treatment tool in this respect. They also reduce the likelihood of false positives for releasing or discharging a patient when evaluating for continued pertinence of the commitment criteria.

Publication Date: August 15, 1998
Effective Date: August 15, 1998
Expiration Date: January 11, 1999
Hearing Date: December 17, 1998
Extension Through: March 11, 1999

EMERGENCY RULES NOW IN EFFECT (3)

Health and Family Services (Health, Chs. HSS/HFS 110--)

1. Rules adopted revising **ch. HFS 119**, relating to the Health Insurance Risk-Sharing Plan.

Finding of Emergency

The Legislature in s. 9123 (4) of 1997 Wis. Act 27 permitted the Department to promulgate any rules that the Department is authorized or required to promulgate under ch. 149, Stats., as affected by Act 27, by using emergency rulemaking procedures except that the Department was specifically exempted from the requirement under s. 227.24 (1) and (3), Stats., that it make a finding of emergency.

Analysis Prepared by the Department of Health and Family Services

The State of Wisconsin in 1981 established a Health Insurance Risk Sharing Plan (HIRSP) for the purpose of making health insurance coverage available to medically uninsured residents of the state.

HIRSP provides a major medical type of coverage for persons not eligible for Medicare (Plan 1) and a Medicare supplemental type of coverage for persons eligible for Medicare (Plan 2). Plan 1 has a \$1,000 deductible. Plan 2 has a \$500 deductible. On December 31, 1997 there were 7,318 HIRSP policies in effect, 83 % of them Plan 1 policies and 17% Plan 2 policies. HIRSP provides for a 20% coinsurance contribution by plan participants up to an annual out-of-pocket maximum of \$2,000 (which includes the \$1,000 deductible) per individual and \$4,000 per family for major medical and \$500 per individual for Medicare supplement. There is a lifetime limit of \$1,000,000 per covered individual that HIRSP will pay for all illnesses.

There is provision under HIRSP for graduated premiums and reduced deductibles. Plan participants may be eligible for graduated premiums and reduced deductibles if their household income for the prior calendar year, based on standards for computation of the Wisconsin Homestead Credit, was less than \$20,000.

The current Budget Act, 1997 Wis. Act 27, transferred responsibility for the Health Insurance Risk-Sharing Plan (HIRSP) from the Office of Commissioner of Insurance to the Department of Health and Family Services effective January 1, 1998. The transfer included the administrative rules that the Office of Commissioner of Insurance had promulgated for the administration of HIRSP. These were numbered ch. Ins 18, Wis. Adm. Code. The Department arranged for the rules to be renumbered ch. HFS 119, Wis. Adm. Code, effective April 1, 1998, and, at the same time, because the program statutes had been renumbered by Act 27, for statutory references in ch. HFS 119 to be changed from subch. II of ch. 619, Stats., to ch. 149, Stats.

Act 27 made several other changes in the operation of the Health Insurance Risk-Sharing Plan. The Department through this rulemaking order is amending ch. HFS 119 by repeal and re-creation mainly to make the related changes to the rules, but also to update annual premiums for HIRSP participants in accordance with authority set out in s. 149.143 (3)(a), Stats., under which the Department may increase premium rates during a plan year for the remainder of the plan year.

Major changes made in the rules to reflect changes made by Act 27 in the HIRSP program statute are the following:

—Transfer of plan administration responsibility from an "administering carrier" selected by the Board of Governors through a competitive negotiation process to Electronic Data Systems (EDS), the Department's fiscal agent for the Medical Assistance Program, called in the revised statute the "plan administrator";

—Deletion of a physician certification requirement in connection with applications of some persons for coverage;

—Addition of alternatives to when eligibility may begin, namely, 60 days after a complete application is received, if requested by the applicant, or on the date of termination of Medical Assistance coverage;

—Addition of a reference to how creditable coverage is aggregated, in relation to eligibility determination;

—Modification of the respective roles of the state agency, now the Department, and the Board of Governors;

—Clarification that the alternative plan for Medicare recipients reduces the benefits payable by the amounts paid by Medicare;

—Modification of cost containment provisions to add that for coverage services must be medically necessary, appropriate and cost-effective as determined by the plan administrator, and that HIRSP is permitted to use common and current methods employed by managed care programs and the Medical Assistance program to contain costs, such as prior authorization;

—Continuation of an alternative plan of health insurance that has a \$2500 deductible (this was added by emergency order effective January 1, 1998);

—Addition of timelines to the grievance procedure for plan applicants and participants, and a provision to permit the Department Secretary to change a decision of the Board's Grievance Committee if in the best interests of the State; and

—Establishment of total insurer assessments and the total provider payment rate for the period July 1, 1998 to December 31, 1998.

Publication Date: July 1, 1998
Effective Date: July 1, 1998
Expiration Date: November 28, 1998
Hearing Date: September 29, 1998
Extension Through: January 26, 1999

2. Rules adopted revising **ch. HFS 163**, relating to certification for the identification, removal and reduction of lead-based paint hazards.

Finding of Emergency

The Department of Health and Family Services finds that an emergency exists and that rules are necessary for the immediate preservation of the public peace, health, safety or welfare. The facts constituting the emergency are as follows:

Exposure to lead in paint, dust or soil is known to have both short term and long term deleterious effects on the health of children, causing learning disabilities, decreased growth, hyperactivity, impaired hearing, brain damage and even death. Occupational exposure in adults may result in damage to the kidneys, the central nervous system in general, the brain in particular and to the reproductive system. Children born of a parent who has been exposed to excessive levels of lead are more likely to die during the first year of childhood. About one child in six has a level of lead in the blood that exceeds the threshold for risk.

A residential dwelling or other building built before 1978 may contain lead-based paint. When lead-based paint on surfaces like walls, ceilings, windows, woodwork and floors is broken, sanded or scraped down to dust and chips, the living environment can become a source of poisoning for occupants. When it becomes necessary or desirable to identify lead hazards or reduce them, it is imperative that persons who provide these services be properly trained to safely and accurately perform lead-based paint activities.

The Department is authorized under s. 254.176, Stats., to establish by rule certification requirements for persons who perform or supervise lead-based paint activities, including lead hazard reduction or lead management activities. Under s. 254.178, Stats., any training course that is represented as qualifying persons for certification must be accredited by the Department and the instructors approved by the Department. Subject to review by a technical advisory committee under s. 254.174, Stats., the Department is authorized under s. 254.167, Stats., to establish procedures for conducting lead inspections and, under s. 254.172, Stats., to promulgate rules governing lead hazard reduction.

The Department's rules for certification to perform lead-based paint activities and for accreditation of training courses are in ch. HFS 163, Wis. Adm. Code. Chapter HFS 163 was promulgated by emergency order in July 1993 to establish certification requirements, including training, for lead abatement workers and lead supervisors, accreditation requirements for the corresponding training courses and criteria for approval of instructors.

The Department amended ch. HFS 163 effective February 18, 1997, by an emergency order. The emergency order added the

certification disciplines of lead inspector, lead project designer and lead risk assessor for persons engaged in lead management activities and added accreditation requirements for the corresponding training courses. In addition, the order added certification fees for the new disciplines and course accreditation application fees.

Several years ago, Congress authorized the U.S. Environmental Protection Agency (EPA) to promulgate regulations that establish minimum certification and work practice standards for lead-based paint professionals, minimum accreditation standards for the courses that prepare persons for certification and minimum standards for approving state and tribal lead certification and accreditation programs. EPA published these regulations in the August 29, 1996, Federal Register as 40 CFR 745, Subparts L and Q.

If a state or Indian tribe fails to request and receive EPA approval for its program by August 30, 1998, EPA is charged with operating a lead training and certification program for that state or tribe. This means that individuals currently certified by, and training courses currently accredited by, the Department of Health and Family Services would also have to apply to EPA and comply with all EPA regulations.

Failure to obtain EPA authorization may negatively affect U.S. Department of Housing and Urban Development (HUD) or EPA grants to local public health agencies for lead hazard reduction and lead poisoning prevention activities and funding for home loans, weatherization loans and other housing assistance. Lack of federal funding may limit the ability of citizens to purchase homes, weatherize homes, or reduce lead-based paint hazards in homes.

In addition, the State lead training and certification program operates primarily on funding from EPA grants. EPA lead grant funding for FFY 99 is dependent on having an approvable program. Without adequate funding, the lead training and certification program be unable to maintain the current high level of responsiveness to complaints about lead hazards and requests for assistance.

Inspections or risk assessments conducted under the real estate disclosure regulations must be conducted by qualified lead professionals. Failure to achieve EPA authorization of the State's lead training and certification program may result in a lack of qualified lead professionals.

Under EPA authorization, states are able to diverge from EPA regulations as long as the alternative is as protective of human health and the environment as the EPA regulations. This flexibility would allow the State lead training and certification program to be more responsive to State needs, which may be different from the needs of the eastern states, the needs of which were reflected in the federal regulations.

Before the Department can receive EPA approval of its lead training and certification program, changes to the current State lead certification and accreditation program must be made. These necessary changes are the basis for this emergency order and include the following major revisions to the current rules:

Certification

- Adds certification requirements for lead companies in addition to individuals.
 - Changes the current optional certification examination to a mandatory certification examination for supervisors, inspectors and risk assessors.
 - Adds a limited term certification called "interim certification" for individuals waiting to take the certification exam.
 - Provides for a maximum 3-year certification period from the completion date of the most recent training course instead of a one-year or 2-year period from the date certification is issued.
 - Revises how worker-safety training is received by requiring that worker-safety training be completed as a prerequisite to lead training rather than be required as part of a lead training course.
 - Reduces the required frequency of refresher training from every 2 years to every 3 years.
 - Adds work practice standards for lead-based paint activities.
- ### Accreditation

- Adds a mandatory hands-on skills assessment for hands-on activities.
- Adds a requirement for work practice standards to be incorporated into training.
- Revises topics and reduces hours for worker and supervisor courses, designed as prerequisite worker-safety training, followed by a 16-hour worker course, with an additional 16-hour supervisor course to follow when supervisor certification is desired.
- Adds a requirement for renewal of accreditation, with accreditation issued for a maximum of 4 years, in place of the current no-expiration accreditation.

Enforcement and oversight

- Expands details on potential enforcement actions in response to EPA's requirement for flexible and effective enforcement actions.
- Adds a requirement for reporting information about lead management activities to the Department to allow the Department to conduct targeted enforcement.

In addition to the changes specifically required by EPA before the State may apply to EPA for approval of its program, the revised rules establish a new discipline called worker-homeowner to meet the needs of homeowners who EPA requires be certified in order to conduct abatement in their own homes when a child has an elevated blood lead level. This special certification category allows the Department to establish minimum training and work practice requirements that will encourage more homeowners with lead poisoned children to permanently abate the lead hazards in their homes than is likely to occur when certified companies must be hired.

Public comment was sought in the development of the rule revisions. On September 5, 1997, the Department published notice in the Wisconsin State Journal of its intent to seek EPA authorization. The notice outlined the major changes needed to bring the state program into compliance with EPA approval criteria. In addition the public was invited to submit comments or request a hearing. No comments were received in response to this notice.

The work practice standards under s. HFS 163.14 were reviewed and approved by a technical advisory committee appointed by the Department in accordance with ss. 254.167, 254.172 and 254.174, Stats.

Publication Date: August 29, 1998
Effective Date: August 29, 1998
Expiration Date: January 25, 1999
Hearing Dates: November 30, December 1, 7 & 9, 1998

3. Rules adopted revising **ch. HFS 124**, relating to designation of critical access hospitals.

Finding of Emergency

The Department of Health and Family Services finds that an emergency exists and that the adoption of the rules is necessary for the immediate preservation of the public peace, health, safety or welfare. The facts constituting the emergency are as follows:

Competitive market forces and the spread of managed care networks and plans during the last few years have adversely affected health care services availability in some rural areas of Wisconsin. In particular, greatly reduced inpatient care at hospitals in rural areas is making it increasingly more difficult for the hospitals to survive. Most of the rural hospitals in a precarious financial condition are located in the western and northern parts of the state. Many serve areas with health care professional shortages. Some of the locations are popular tourist destinations.

These changes to the Department's rules for hospitals will enable eligible hospitals in rural Wisconsin to become limited service medical facilities called "critical access" hospitals and thereby reduce their costs but still be certified to receive Medicare and Medicaid funding for care provided to Medicare and Medicaid recipients.

The critical access hospital is defined under changes made to the federal Social Security Act by P.L. 105-33, the Balanced Budget Act of 1997, and conforming changes to ch. 50, Wis. Stats., made by the 1997 Wisconsin Act 237. A critical access hospital must be a nonprofit or public facility that is located in a rural area, usually more than a 35-mile drive from another hospital or is certified by the State as being a necessary provider of health care services to residents in the area. This type of hospital must make available 24-hour emergency care services; provide inpatient care for a patient for a period not to exceed 96 hours; and can have inpatient services provided by registered nurses with advanced qualifications, with physician oversight but without the physician being present in the facility. A critical access hospital must have nursing services available on a 24-hour basis, but need not otherwise staff the facility when no patients are present, and it may have auxiliary services, such as laboratory work, provided on a part-time, off-site basis.

Many of the features of a critical access hospital represent departures from what has been understood as a hospital under both federal law (for purposes of Medicare and Medicaid hospital provider certification) and state law (for purposes of hospital approval). The recent federal statute and state statute changes have re-defined "hospital" to accommodate critical access hospitals. Under the new federal Medicare Rural Hospital Flexibility Program, 42 USC 1395i - 4, criteria are specified by which a state designates a hospital as a critical access hospital and by which the Secretary of the federal Department of Health and Human Services approves a facility as a critical access hospital.

This rulemaking order amends ch. HFS 124, relating to hospitals, to accommodate critical access hospitals. The order amends the definition of "hospital" to make it like the amended statutory definition; specifies eligibility criteria for the Department's designation of a facility as a critical access hospital, and a process for applying for designation; and requires a critical access hospital to be operated in compliance with all provisions of ch. HFS 124, but with exceptions that relate to limits on the number of acute care and swing beds, limits and exceptions on acute inpatient stays, staffing in the absence of inpatients, health care professional staff who provide inpatient care, permission to obtain specified auxiliary services on a part-time and off-site basis and a requirement for a written agreement with one or more full-time general hospitals covering referrals of patients from the critical access hospital and other matters.

Thirty-three rural hospitals in the state with low annual inpatient days have been identified as potential applicants for critical access hospital status. From 3 to 8 of these are now actively considering closing altogether or changing their health care delivery focus. They must decide soon about maintaining their levels of operation. The need to preserve some type of hospital service is critical for people in these small towns and their surrounding areas.

Once a rural hospital closes it can no longer acquire federal critical access hospital status. Changes to ch. HFS 124 are necessary so that the Department can designate a rural hospital as a critical access hospital. The rule changes are being made by emergency order to prevent the imminent closing of several rural hospitals and the consequent loss of readily accessible hospital services for people in the rural areas served by those hospitals.

Publication Date: September 12, 1998
Effective Date: September 12, 1998
Expiration Date: February 9, 1999
Hearing Date: October 13, 1998

EMERGENCY RULES NOW IN EFFECT

Insurance

Rule adopted amending **s. Ins 2.80 (2) (intro.) and (a)**, relating to delaying effective date for NAIC valuation of life insurance policies model regulation, ("XXX"), from January 1, 1999 to July 1, 1999.

Finding of Emergency

Statutory authority: ss. 601.41 (3), 227.24

Statute interpreted: none

The Commissioner of Insurance finds that an emergency exists and that a rule is necessary for the immediate preservation of the public peace, health, safety, or welfare. Facts constituting the emergency are as follows:

On December 16, 1997 the Commissioner created Ins 2.80, Wis. Adm. Code in order to adopt the 1995 National Association of Insurance Commissioners ("NAIC") valuation of life insurance policies model regulation, or "XXX". This new rule concerning requirements for determining the valuation of reserve liabilities for life insurance policies is currently to take effect on January 1, 1999. Recently the NAIC agreed to consider a revised model regulation and the NAIC is expected to formally approve such a model early in 1999. Wisconsin is the only state that has set January 1, 1999 as an effective date for the 1995 model regulation. This emergency order is necessary to allow time to consider implementation of the revised model regulation once it is adopted by the NAIC.

Publication Date: December 23, 1998

Effective Date: January 1, 1999

Expiration Date: May 31, 1999

EMERGENCY RULES NOW IN EFFECT (5)

Natural Resources

(Fish, Game, etc., Chs. NR 1—)

1. A rule was adopted revising **s. NR 45.10 (3) and (4)**, relating to reservations on state parks, forests and other public lands and waters under the Department's jurisdiction.

Exemption From Finding of Emergency

1997 Wis. Act 27, section 9137 (1) authorizes the department to promulgate these rules without a finding of emergency under s. 227.24, Stats.

Summary of Rules:

1. Creates a process for accepting telephone reservations for department camp sites.
2. Establishes time frame for making reservations.

Publication Date: December 15, 1997

Effective Date: April 1, 1998

Expiration Date: April 1, 1999

Hearing Date: January 12, 1998

2. Rules adopted revising **chs. NR 10 and 11**, relating to deer hunting in Deer Management Unit 67A.

Finding of Emergency

The emergency rule procedure, pursuant to s. 227.24, Stats., is necessary and justified in establishing rules to protect the public welfare. Deer are causing significant crop damage concerns in this

Unit. It is highly unlikely that the regular 1998 gun deer seasons will achieve the prescribed harvest of antlerless deer.

Publication Date: June 24, 1998

Effective Date: October 1, 1998

Expiration Date: February 28, 1999

3. Rules were adopted revising **ch. NR 19**, relating to wildlife damage abatement and claims program.

Exemption From Finding of Emergency

Pursuant to s. 9137(1s)(b), 1997, Wis. Act 27 the department is not required to make a finding of emergency for this rule promulgated under s. 227.24, Stats.

Publication Date: July 1, 1998

Effective Date: July 1, 1998

Expiration Date: November 28, 1998

Extension Through: January 26, 1999

4. Rules adopted revising **s. NR 20.03 (1)(k)**, relating to sport fishing for yellow perch in Sauk Creek, Ozaukee County.

Finding of Emergency

The Department of Natural Resources finds that an emergency exists and the foregoing rules are necessary for the immediate preservation of the public peace, health, safety or welfare. A statement of the facts constituting the emergency is as follows:

The yellow perch population in Lake Michigan is in a state of decline. Harvests of yellow perch must be limited immediately in order to maximize the probability of good reproduction in the future. Lake Michigan yellow perch are attracted by the electric power plant thermal discharge into Sauk creek, an Ozaukee county tributary of Lake Michigan. The sport fishing harvest limits proposed here remove an opportunity for high sport harvests of yellow perch at one location where current regulations do not afford adequate protection for yellow perch. Accordingly, it is necessary to restrict the harvest of yellow perch from Sauk creek by establishing an open season and daily bag limit that coincide with Lake Michigan's.

Publication Date: June 27, 1998

Effective Date: June 27, 1998

Expiration Date: November 24, 1998

Hearing Date: July 24, 1998

Extension Through: January 22, 1999

5. Rules adopted revising **s. NR 10.01 (1)**, relating to the 1998 migratory game bird season.

Finding of Emergency

The emergency rule procedure, pursuant to s. 227.24, Stats., is necessary and justified in establishing rules to protect the public welfare. The federal government and state legislature have delegated to the appropriate agencies rule-making authority to control the hunting of migratory birds. The State of Wisconsin must comply with federal regulations in the establishment of migratory bird hunting seasons and conditions. Federal regulations are not made available to this state until mid-August of each year. This order is designed to bring the state hunting regulations into conformity with the federal regulations. Normal rulemaking procedures will not allow the establishment of these changes by September 1. Failure to modify our rules will result in the failure to provide hunting opportunity and continuation of rules which conflict with federal regulations.

Publication Date: September 15, 1998

Effective Date: September 15, 1998

Expiration Date: February 12, 1999

Hearing Date: October 15, 1998

EMERGENCY RULES NOW IN EFFECT

Natural Resources

(Environmental Protection–Remediation, Chs. NR 700–)

Rules adopted creating **ch. NR 749**, relating to the assessment and collection of fees for providing assistance regarding the remediation and redevelopment of contaminated lands.

Finding of Emergency

The Department of Natural Resources finds that an emergency exists and rules are necessary for the immediate preservation of the public peace, health, safety or welfare. A statement of facts constituting the emergency is that in order for the Department to facilitate the cleanup and redevelopment of many contaminated sites that could adversely affect public health, safety or welfare, fee revenue must be generated immediately in order to timely fill the program revenue positions which were authorized in the recent budget bill.

Publication Date: September 19, 1998
Effective Date: September 19, 1998
Expiration Date: February 16, 1999

EMERGENCY RULES NOW IN EFFECT (3)

Public Instruction

1. Rules adopted revising **ch. PI 35**, relating to the Milwaukee parental school choice program.

Finding of Emergency

The Department of Public Instruction finds an emergency exists and that a rule is necessary for the immediate preservation of the public welfare. A statement of the facts constituting the emergency is:

On June 10, 1998, the Wisconsin Supreme Court found constitutional the revisions made to the Milwaukee parental choice program under 1995 Wis. Act 27.

Since the provisions under the Act (including allowing the participation of religious schools) are to be implemented during the 1998–99 school year, rules must be in place as soon as possible in order to establish uniform financial accounting standards and financial audit requirements required of the participating private schools as providing for under the Act. The requirements established under this rule were discussed with the private schools participating under the program during the 1996–97 school year. The schools indicated an acceptance of these provisions.

These emergency rules will be promulgated as proposed permanent rules.

Publication Date: August 5, 1998
Effective Date: August 5, 1998
Expiration Date: January 1, 1999
Hearing Date: October 13, 1998
Extension Through: March 1, 1999

2. Rules adopted creating **ch. PI 38**, relating to grants for peer review and mentoring.

Finding of Emergency

The Department of Public Instruction finds an emergency exists and that a rule is necessary for the immediate preservation of the public welfare. A statement of the facts constituting the emergency is:

Under s. 115.405 (2), Stats., the state superintendent shall allocate \$500,000 annually, for one-year grants that allow a participant CESA, consortium of school districts, or a combination thereof to provide assistance and training for teachers who are licensed or have been issued a permit under ss. 115.28 (7) and 115.192, Stats., to implement peer review and mentoring programs.

The grant award period begins the 1998–99 school year, since the timelines would be too stringent to implement this grant program by September 1, 1998, the department is requiring applications to be submitted by November 1, 1998. The grant award period will be from December 1, 1998 to June 30, 1999. In order for applicants to develop proposals and for the state superintendent to review the proposals and make grant awards in time for the upcoming school year, rules must be in place as soon as possible.

Publication Date: August 15, 1998
Effective Date: August 15, 1998
Expiration Date: January 11, 1999
Hearing Date: October 20, 1998
Extension Through: March 11, 1999

3. Rule adopted revising **s. PI 3.03 (6) (b) 3.**, relating to alternate teaching permits.

Finding of Emergency

The Department of Public Instruction finds an emergency exists and that a rule is necessary for the immediate preservation of the public welfare. A statement of the facts constituting the emergency is:

1997 Wis. Act 237, the budget adjustment bill, modified several provisions relating to professional teaching permits. Specifically, an individual who holds a bachelor's degree in engineering, music, art, foreign language, computer science, mathematics or science from an accredited institution of higher education, has at least 5 years of experience as a professional in the subject area in which his or her degree was awarded and demonstrates, to the satisfaction of the state superintendent, competency in that subject area may apply to the state superintendent for enrollment in a 100 hour alternative teacher training program. The state superintendent shall grant a professional teaching permit to any person who satisfactorily completes the alternative teaching program.

Since the provisions under the Act became effective this summer, and alternative teaching programs will be offered in the near future, rules must be in place as soon as possible in order to notify potential applicants of the alternative teaching permit program requirements.

Publication Date: November 1, 1998
Effective Date: November 1, 1998
Expiration Date: March 31, 1999
Hearing Dates: January 4, 5, 6 & 7, 1999

EMERGENCY RULES NOW IN EFFECT (2)

Public Service Commission

1. Rules were adopted amending **s. PSC 4.30 (4) (a) and (5) (a) and (b)**, relating to the preparation of draft environmental impact statements for electric generating plant projects that must be reviewed in 90 days.

Finding of Emergency

The Commission's review of CPCN applications from the winning bidders under 1997 Wis. Act 204, Section 96 (1), will

commence when completed applications are filed. This is likely to occur on or before August 31, 1998, at which point state law grants the Commission only 90 days to finish its review of the project applications. Permanent rules cannot be adopted in time to affect the Commission's review period. Preservation of the public peace, health, safety or welfare necessitate putting this rule into effect immediately, so that the Commission can complete its review process in a timely manner.

Publication Date: July 17, 1998
Effective Date: July 17, 1998
Expiration Date: December 14, 1998

2. Rules adopted creating **ch. PSC 187**, relating to Sewer Main Extension: Cost Recovery.

Exemption From Finding of Emergency

Pursuant to the legislature's instruction in s. 66.076 (1) (b), Stats., as created by 1997 Wis. Act 213, and section 5 of that Act, the Public Service Commission is adopting emergency rules, establishing standards for the compensation of subdivision developers when a person outside the subdivision seeks to connect to a sewer system constructed by the developer.

Section 5 (1)(b) of 1997 Wis. Act 213, the legislature specifically exempted the commission from finding of emergency required by s. 227.24, Stats.

Publication Date: November 1, 1998
Effective Date: November 1, 1998
Expiration Date: March 31, 1999
Hearing Date: January 8, 1999

EMERGENCY RULES NOW IN EFFECT (2)

Regulation & Licensing

1. Rules were adopted creating **chs. RL 131 to 135**, relating to the registration and regulation of home inspectors.

Exemption From Finding of Emergency

The Department of Regulation and Licensing finds that an emergency exists and that a rule is necessary for the immediate preservation of the public peace, health, safety or welfare. A statement of the facts constituting the emergency is:

Section 3 of 1997 Wis. Act 81 states that the department is not required to make a finding of emergency; however, the department offers the following information relating to the promulgation of these rules as emergency rules. The new regulation of home inspectors was created in 1997 Wis. Act 81. The Act was published on April 27, 1998; however, the Act created an effective date for the new regulation as being the first day of the 7th month beginning after publication. That date is November 1, 1998. Nonstatutory provisions in Section 3 of the Act require the department to create a committee, consisting of 6 home inspectors and 3 public members, to advise the department in promulgating rules. This section also authorizes the department to promulgate rules as emergency rule before November 1, 1998. The advisory committee was formed and met 7 times to develop administrative rules which must be in effect on the effective date of the new regulation.

Publication Date: November 1, 1998
Effective Date: November 1, 1998
Expiration Date: March 31, 1999
Hearing Date: December 17, 1998

2. Rules adopted creating **chs. RL 140 to 142**, relating to the registration of music, art and dance therapists.

Finding of Emergency

The proposed rules interpret the provisions contained in s. 440.03 (14), Stats., as created by 1997 Wis. Act 261, which governs the registration of music, art and dance therapists. Section 440.03 (14)(d), Stats., states that the department shall promulgate rules that specify the services within the scope of practice of music, art and dance therapy that a registrant is qualified to perform. Section 440.03 (14)(d), Stats., gives authority to the department to make investigations and conduct hearings to determine whether a violation of that subsection or any rule promulgated under s. 440.03 (14)(d), Stats., has occurred and to reprimand a person who is registered under par. (a) or deny, limit, suspend or revoke a certification of registration if it finds that an applicant or certificate holder has violated that subsection or any rule promulgated under par. (d). These provisions will become effect on December 1, 1998.

Under the normal rule-making process, the proposed rules would not take effect until the spring of 1999. The department is requesting that this rule be put into effect before 1999 for the following reasons:

- (1) The emergency rules will enable the department to adopt application which would be implemented on December 1, 1998.
- (2) The emergency rules will enable the department to provide immediate guidance to the various professions regarding their scope of practice.
- (3) Without the adoption of the emergency rules, the department will not be able to discipline registrants until the spring of 1999. The emergency rules will enable the department to immediately determine what constitutes grounds for discipline and to take appropriate action based upon that determination.

Publication Date: November 29, 1998
Effective Date: December 1, 1998
Expiration Date: April 30, 1999
Hearing Date: January 12, 1999

EMERGENCY RULES NOW IN EFFECT

Revenue

Rules adopted amending **s. Tax 2.39** and creating **s. Tax 2.395**, relating to the use of an alternative apportionment method.

Finding of Emergency

The Department of Revenue finds that an emergency exists and that a rule order is necessary for the immediate preservation of the public peace, health, safety or welfare. A statement of the facts constituting the emergency is:

Section 2r of 1997 Wis. Act 299 requires that the Department of Revenue prepare administrative rules specifying the procedure for a corporation to request the use of an alternative apportionment methods, the circumstances under which the department may grant such a request and the alternative methods that the department may authorize under s. 71.25 (14), Stats. The allowance of an alternative apportionment method takes effect for taxable years beginning on January 1, 1998. Corporations must request the use of an alternative methods of apportionment on or before January 1, 2000.

Publication Date: September 29, 1998
Effective Date: September 29, 1998
Expiration Date: February 26, 1999
Hearing Date: December 28, 1998

EMERGENCY RULES NOW IN EFFECT**Transportation**

Rules adopted revising **ch. Trans 328**, relating to motor carrier safety requirements for intrastate transportation of hazardous materials.

Finding of Emergency

The Department of Transportation finds that an emergency exists and that a rule is necessary for the immediate preservation of the public peace, health, safety or welfare. A statement of the facts constituting the emergency is that new federal hazardous material rules include intrastate transportation. Within the revised rules are exceptions allowed for farm operations, the use of certain nonspecification packages and permanently mounted nonspecification nonbulk metal tanks used to transport flammable liquids in intrastate commerce. The exceptions will only apply if state statutes or regulations are in effect prior to October 1, 1998 allowing those exceptions. Failure to implement the allowed exceptions would have a negative impact on the state agricultural community as well as other businesses who would benefit from them.

Publication Date: September 15, 1998
Effective Date: September 15, 1998
Expiration Date: February 12, 1999
Hearing Date: October 5, 1998

EMERGENCY RULES NOW IN EFFECT**Veterans Affairs**

Rules adopted amending **s. VA 2.01 (2) (b)2.**, relating to the expenditure limitation for dentures under the health care aid grant program.

Finding of Emergency

The Department of Veterans Affairs finds that an emergency exists and that a rule is necessary for the immediate preservation of the public peace, health, safety or welfare. A statement of the facts constituting the emergency is:

The Department provides payment to dental providers for dentures under the health care aid grant program for needy veterans and their dependents. Under **s. VA 2.01 (2) (b) 2.**, Wis. Adm. Code., the Department is restricted to a \$50,000 cap per fiscal year for the payment of claims for dentures. As the result of a significant increase in the use of the health care aid grant program for dentures, the Department has received requests for approval of treatment plans involving dentures which would result in expenditures in excess of the fiscal year cap. The Department was required to terminate denture coverage within the first two weeks of the most recent fiscal year. A significant number of applications were returned to veterans who were thus unable to receive coverage for dentures.

The treatment plans submitted with the applications typically encompass the removal of teeth with a resulting need for dentures. Failure to provide dentures could have a negative impact upon an individual's health. It is necessary that the Department has sufficient expenditure authority to meet the significant demand for this health care benefit. The emergency rule cap will accomplish this goal.

Publication Date: October 12, 1998
Effective Date: October 12, 1998
Expiration Date: March 11, 1999
Hearing Date: December 11, 1998

EMERGENCY RULES NOW IN EFFECT (2)**Workforce Development**

(Economic Support, Chs. DWD 11–59)

1. Rules adopted renumbering **ss. HFS 55.55 to 55.62** and revising **ch. DWD 55**, relating to background checks for persons involved with certified day care.

Finding of Emergency

The Department of Workforce Development finds that an emergency exists and that a rule is necessary for the immediate preservation of the public peace, health, safety and welfare. A statement of the facts constituting the emergency is:

Beginning on October 1, 1998, recently enacted provision in **ch. 48, Stats.**, require the completion of background reviews on caregivers and others who come into contact with clients in the programs operated by caregivers. Although most of these provisions are administered by the Department of Health and Family Services, they also include day care programs certified by the Department of Workforce Development. DWD is adopting this emergency rule so that county and tribal social services agencies and human services agencies will be able to implement the new background review requirements in relation to certified day care programs as they become effective.

Publication Date: October 1, 1998
Effective Date: October 1, 1998
Expiration Date: February 28, 1999

2. Rules adopted renumbering **chs. HSS 80 to 82** as **chs. DWD 40 to 42**, and creating **ch. DWD 43**, relating to child support administrative enforcement.

Finding of Emergency

The Department of Workforce Development finds that an emergency exists and that a rule is necessary for the immediate preservation of the public peace, health, safety and welfare. A statement of the facts constituting the emergency is:

State and federal legislation have created new procedures for the administrative enforcement of child support obligations. To place the new procedures into effect, the Department of Workforce Development has scheduled public hearings on a proposed permanent rule during the month of October, 1998. While the permanent rulemaking process proceeds, DWD is adopting the provisions in the current draft as an emergency rule so that county child support agencies will be able to utilize the new statutory enforcement and collection procedures for the benefit of custodial parents as soon as possible.

Publication Date: October 1, 1998
Effective Date: October 1, 1998
Expiration Date: February 28, 1999

EMERGENCY RULES NOW IN EFFECT**Workforce Development**

(Prevailing Wage Rates, Chs. DWD 290–294)

Rules adopted amending **s. DWD 290.155**, relating to the annual adjustment of the minimum estimated project costs for the application of the requirement to obtain a determination of prevailing wage rates for workers employed on state or local public works projects.

Finding of Emergency

The Department of Workforce Development finds that an emergency exists and a rule is necessary for the immediate

preservation of the public peace, health, safety and welfare. A statement of the facts constituting the emergency is:

The Department of Workforce Development, acting under its statutory authority to adjust threshold limits in accordance with changes in construction costs, has determined that the increase in construction costs between November 1997 and December 1998 requires that the threshold limits for prevailing wage rate determinations be raised from \$32,000 to \$33,000 for single-trade projects and from \$160,000 to \$164,000 for multi-trade projects.

If these new threshold limits are not put into effect by an emergency rule, the old limits will remain in effect for approximately six months, until the conclusion of the regular rulemaking process. The practical effect of this would be that, between now and 7/1/99, a single-trade project costing more than

\$32,000 but less than \$33,000, or a multi-trade project costing more than \$160,000 but less than \$164,000, would not be exempt from the requirement to get a prevailing wage rate determination. A local unit of government or state agency proceeding with a public works project in this cost range during this period would incur the added complication of complying with the state prevailing wage laws, despite the fact that the threshold limit adjustment is based on national construction cost statistics and is very unlikely to be changed by the regular rulemaking process. The Department is proceeding with this emergency rule to avoid imposing this additional administrative burden on local governments and state agencies.

Publication Date: January 4, 1999

Effective Date: January 4, 1999

Expiration Date: June 3, 1999

STATEMENTS OF SCOPE OF PROPOSED RULES

Commerce

Subject:

Ch. Comm 70 – Relating to the Historic Building Code.

Description of policy issues:

Description of the objective of the rule:

The Historic Building Code took effect on October 1, 1986. The code provides alternative standards owners may elect to use to preserve and restore buildings designated as historic buildings. The alternative standards allow owners to preserve the original or restored architectural building elements. The code also provides standards to encourage energy conservation, and a cost-effective approach to preserve and restore buildings designated as historic buildings.

The Division estimates it receives around 25 buildings annually where owners elect to use the historic building code. The objective of this rule will be to update the historic building code based on actual experience since the code was promulgated.

Description of existing policies relevant to the rule and of new policies proposed to be included in the rule and an analysis of policy alternatives:

At this point, no new policies have been identified for this general updating of the code.

Statutory authority for the rule:

Section 101.121, Stats., authorizes the creation of a historic building code and the review of a variance to any rule within a 10-day time period without additional costs.

Estimate of the amount of time that state employees will spend to develop the rule and of other resources necessary to develop the rule:

The time estimated to develop the rule is as follows:

Creating and meeting with a council related to the changes	200 hours
Rule drafting and internal processing to announce public hearings	50 hours
Conducting public hearings and summarizing hearing comments	44 hours
Preparing rules in final draft form for legislative review	24 hours
Meet with Legislators on subject rules	8 hours
Prepare rule for adoption and file adopted rule	4 hours
Total	330 hours

Corrections

Subject:

DOC Code – Relating to a rule promulgation to allow the Department of Corrections to provide pharmacological intervention with serious child sex offenders.

Description of policy issues:

Description of the objectives of the rule:

The objective of the rule is to provide for the public safety and allow treatment of serious child sex offenders by means of pharmacological intervention. This rule implements recently enacted statutory authority for requiring pharmacological treatment as a condition of probation or parole using an antiandrogen, which

is a substance that inhibits the biological effects of male hormones, such as testosterone, of persons convicted of child sex offenses where the victim has not yet reached 13 years of age.

The proposed permanent rule establishes policy for the identification and selection of offenders the Department may require to undergo pharmacological treatment. Offenders who meet statutory requirements of having been convicted of a crime specified in s. 948.02(1) or (2) or 948.025(1), Stats., against a child who had not attained the age of 13 years will be screened clinically and medically using criteria set forth by this rule. Offenders who are not eliminated after clinical and medical evaluation will be provided notice of the Department's intent to order the administration of antiandrogens, or their chemical equivalent.

The proposed permanent rule requires the Department to establish rules for each offender required to undergo pharmacological treatment, including advising offenders of the consequences of violating the rules or conditions of probation or parole supervision. Unless waived by the offender a hearing process is provided to allow the offender to present relevant evidence before an impartial hearing examiner before treatment may begin. The offender may appeal adverse decisions of a hearing examiner to the applicable division administrator before complying with pharmacological treatment. The decision of the secretary is final. All offenders who are required to undergo pharmacological treatment will be reviewed every two years. Criteria for limiting or extending the duration of pharmacological treatment is specified.

Statutory authority for the rule:

This chapter interprets s. 304.06 (1q), Stats.

Estimate of the amount of time state employees will spend to develop the rule and other resources necessary to develop the rule:

The Department estimates that it will take 300 hours to develop the rule including drafting, cost estimates, public hearings, and complying with rule-making requirements.

Financial Institutions (Division of Banking)

Subject:

Ch. RL 41 – Relating to the registration and renewal of registration fees for mortgage bankers, loan originators and mortgage brokers; the transfer fee for loan originators; and the registration periods for all registration and renewals of registrations.

Description of policy issues:

Description of the objective of the rule:

The objective of the rule is to renumber and amend ch. RL 41 (title), and to repeal and recreate ss. RL 41.01 and 41.02.

Description of the existing policies and new policies included in the proposed rule and an analysis of policy alternatives:

The proposed rule sets forth the registration and renewal of registration fees for mortgage bankers, loan originators and mortgage brokers; the transfer fee for loan originators; and the registration periods for all registration and renewals of registrations. The proposed rule updates fees to national standards, and staggers registrations for industry convenience and greater manageability by the Department of Financial Institutions. The current bi-annual registration may not allow the licensee the full license term depending on when the license is obtained.

Statutory authority for the proposed rule:

SS. 224.72 (8) and 224.73 (3), Stats., and 1997 Wis. Act 145, Section 72.

Estimate of the amount of time agency employees will spend developing the proposed rule and of other resources needed to develop the rule:

Estimated amount of time agency employees will spend developing the proposed rule: 40 hours. No other resources are necessary.

Kickapoo Valley Reserve Management Board

Subject:

Promulgation of rules relating to the Kickapoo Reserve Management Board and Kickapoo Valley Reserve land.

Description of policy issues:

Formal state policies for the Kickapoo Valley Reserve do not exist as the property is currently owned and managed by the U.S. Army Corps of Engineers as the La Farge Lake Project. The U.S. Army Corps of Engineers is expected to transfer the property to the State of Wisconsin by March of 2000. The Kickapoo Reserve Management Board is currently responsible for the day-to-day management of the property through a lease agreement with the U.S. Army Corps of Engineers.

Description of the objectives of the rule:

The objective of the rule is to create policies applicable to the land within the Kickapoo Valley Reserve. Administrative rules governing the land will meet the legislative objective directing the Kickapoo Reserve Management Board to “manage land in the Kickapoo Valley Reserve to preserve and enhance its unique environmental, scenic and cultural features, to provide facilities for the use and enjoyment of visitors to the reserve and to promote the reserve as a destination for vacationing and recreation”. (See s. 41.41 (3), Stats.)

Description of existing policies relevant to the rule and of new policies proposed to be included in the rule, and an analysis of policy alternatives:

Lands within the Kickapoo Valley Reserve are currently subject to federal regulations under Title 36 of the Code of Federal Regulations. Upon transfer of the land to the state, the federal regulations will, for the most part, no longer be applicable. Section 41.41, Stats., gives the Kickapoo Reserve Management Board general authority to establish policy for management of the Kickapoo Valley Reserve land transferred to the state. Policies to be included in the rule are:

- Identification of visitor use areas;
- Regulation of certain recreation activities;
- Facilities management;
- Law enforcement;
- Establishing and administering fees.

The alternative to rule-making is for the Board to attempt to set policy for management of the Reserve land based strictly upon the statutory language. The Legislature recognized the need for rule-making to create more specific policy with its authorization to the Board of specific rule-making authority in s. 41.41 (7) (k), Stats.

Statutory authority for the rule:

The statutory authority for the rule is s. 41.41 (7) (k), Stats.

Estimate of the amount of time state employees will spend to develop the rule and other resources necessary to develop the rule:

The Kickapoo Reserve Management Board estimates that it will take approximately 30 hours of staff time on the rule which includes discussing the rule with the public, organized user groups and members of Wisconsin’s Legislature and Legislative Council.

SUBMITTAL OF RULES TO LEGISLATIVE COUNCIL CLEARINGHOUSE

Notice of Submittal of Proposed Rules to Wisconsin Legislative Council Rules Clearinghouse

Please check the Bulletin of Proceedings for further information on a particular rule.

Commerce

Rule Submittal Date

On December 16, 1998, the Wisconsin Department of Commerce submitted a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse.

Analysis

Statutory authority: s. 145.26, Stats.

The proposed rule-making order affects ch. Comm 90, relating to the design and construction of public swimming pools.

Description of the proposed rule (s):

This chapter establishes rules under s. 145.26, Stats., for design and construction of public swimming pools. In this chapter, several pool types, including whirlpools, are specified and various health and safety issues are enumerated for these pool types for public use. This chapter does not include the design and construction or operation and maintenance of any residential-type pools.

Reason for the proposed rule (s):

A request for various revisions or exceptions to the current ch. Comm 90 was made by the Bed & Breakfast Industry and presented to the Joint Committee for Review of Administrative Rules. The tourist industry is mainly concerned with the limitations and/or restrictions on use of residential-type swimming pools as well as whirlpools for public use in bed and breakfast establishments established after May 11, 1990 (as per s. 254.61 (1), Stats.). [The circumstances are better described for the situations where a residence having a pool and/or whirlpool was converted from a residence to a bed and breakfast establishment.] These issues, as well as a number of the requirements for modification of residential-type pools for public use, were reviewed by the Pool Advisory Code Council and these revisions are contained in the public hearing draft.

Agency Procedure for Promulgation

A public hearing is required and will be scheduled. The agency unit responsible for promulgation of the proposed rule is the Department of Commerce.

Contact Information

If you have substantive questions regarding this rule, you may contact:

Lynita Docken
Plumbing Program Manager
Telephone (608) 785-9349

Agency contact person for internal processing:

Jean M. MacCubbin
Code Consultant
Telephone (608) 266-0955

Corrections

Rule Submittal Date

Notice is hereby given that pursuant to s. 227.14 (4m), Stats., on December 28, 1998, the Department of Corrections submitted proposed s. DOC 328.21 (3) and (7), Wis. Adm. Code, to the Wisconsin Legislative Council Staff, relating to search and seizure of probationers and parolees.

Analysis

Statutory authority: ss. 227.11 (2) and 973.10, Stats.

Statute interpreted: s. 973.10 (1) and (2), Stats.

The current administrative rule, s. DOC 328.21 (3) and (7), allows the Department of Corrections to search an offender's residence for contraband. The amended rule will enlarge this authority and allow the Department to search an offender's residence for an offender as well as contraband. The rule is pursuant to a legislative enactment that provided funding for the Department of Corrections to create an absconder unit in southeastern Wisconsin. The rule will make community supervision more meaningful and promote accountability among offenders by allowing the Department of Corrections to search the residences of offenders who are not in compliance with the rules of supervision.

Agency Procedure for Promulgation

A public hearing is required under s. 227.16 (1), Stats., and will be scheduled at a later date. The organizational unit that is primarily responsible for promulgation of the rule is the Division of Community Corrections.

Contact Information

If you have questions regarding this rule, you may contact:

Robert G. Pultz
Assistant Legal Counsel
Telephone (608) 267-0922

Public Service Commission

Rule Submittal Date

Notice is hereby given that pursuant to s. 227.15, Stats., on January 4, 1999, the Public Service Commission submitted proposed ch. PSC 135, Wis. Adm. Code, to the Wisconsin Legislative Council Rules Clearinghouse, relating to gas safety rules.

Analysis

At its open meeting of December 17, 1998, the Public Service Commission approved proposed rules to repeal and recreate ch. PSC 135, Wis. Adm. Code. The proposed rules adopt and incorporate by reference current federal pipeline safety regulations.

Agency Procedure for Promulgation

A public hearing is required, and a public hearing is scheduled for February 2, 1999.

Contact Information

If you have any substantive questions regarding the proposed rules, you may contact:

Thomas Stemrich
Telephone (608) 266-2800

If you have any questions regarding the Commission's internal processing of the proposed rules, you may contact:

John Lorence
Telephone (608) 266-8128

NOTICE SECTION

Notice of Hearing *Agriculture, Trade & Consumer Protection*

The State of Wisconsin Department of Agriculture, Trade and Consumer Protection announces that it will hold a public hearing on a department emergency rule relating to fish farms and live fish and fish egg imports (proposed chapters ATCP 10 and 11, Wis. Adm. Code). The hearing will be held at the time and place shown below. The public is invited to attend the hearing and make comments on the emergency rule. An interpreter for the hearing impaired will be available on request for this hearing. Please make reservations for a hearing interpreter by January 22, 1999, either by writing to Lynn Jarzombek, P. O. Box 8911, Madison, WI 53708-8911, or by calling 608-224-4883. TTY users call 608-224-5058.

Hearing Information

February 3, 1999
Wednesday
commencing at 4:30 p.m.

Dept. of Agriculture, Trade
& Consumer Protection
Board Room
2811 Agriculture Drive
Madison, WI

Handicapped accessible

Analysis Prepared by the Department of Agriculture, Trade and Consumer Protection

Statutory authority: ss. 93.07(1), 95.60(4s)(d) and (5),
and 227.24(1)(a)

Statute interpreted: s. 95.60

This emergency rule implements s. 95.60, Stats., created by 1997 Wis. Act 27. Among other things, s. 95.60, Stats. directs the Department of Agriculture, Trade and Consumer Protection (DATCP) to register fish farms and regulate live fish imports. Act 27 transferred these functions to DATCP from the Department of Natural Resources. This emergency rule establishes interim registration and import standards, pending adoption of "permanent" rules.

The DATCP Board approved final draft "permanent" rules on December 9, 1998. However, DATCP may not adopt the "permanent" rules until those rules undergo legislative committee review. Annual fish farm registration renewals will come due on January 1, 1999, before the "permanent" rules take effect. Interim rules are needed to administer the annual registration renewals, and to prevent imports of diseased fish, pending the effective date of the "permanent" rules.

This emergency rule adopts, on a temporary basis, the registration provisions contained in the final draft "permanent" rule approved by the DATCP Board. This emergency rule also continues interim fish import requirements based on import provisions previously administered by DNR. The final draft "permanent" rules, when adopted, will expand on these interim requirements.

Fish Farm Registration

Who Must Register

Under this emergency rule, a person (including the state of Wisconsin or an agency of the state) operating a fish farm for any of the following purposes must hold an annual fish farm registration certificate from DATCP:

- Hatching fish eggs or holding live fish for any of the following purposes:

- *Sale or distribution.
- *Introduction into the waters of the state.
- *Fishing.
- *Use as bait or fertilizer.
- *Use as human food or animal feed.

*Education, demonstration or research.

- Holding live fish or fish eggs owned by another person.

Exemptions

There are some exemptions to the fish farm registration requirement. Under this emergency rule, a person may do any of the following without a fish farm registration certificate:

- Hatch or hold “ornamental” fish (including goldfish, koi, tropical freshwater fish that cannot survive in temperatures below 38°F, and saltwater fish) unless commingled with non-ornamental fish or reared for bait, human food or animal feed.
- Hold bait fish under a bait dealer license issued by the Wisconsin department of natural resources (DNR).
- Hatch or hold fish in a fully enclosed building solely for purposes of demonstration, education or research within that building, provided that no untreated water used to hold those fish is discharged to waters of the state.
- Exhibit fish in a public forum for not more than 15 days in a calendar year, or for a longer period of time which the department authorizes in writing.
- Hold fish for not more than 30 days at a food processing plant, retail food establishment or restaurant pending slaughter or sale to consumers at that facility, provided the facility does not discharge to waters of the state any untreated water used to hold or process those fish.
- Transport live fish or fish eggs to or from a fish farm.

Type 1 or Type 2 Registration

This emergency rule establishes 2 types of fish farm registration:

- Type 1: The holder of a type 1 registration certificate may operate a fish farm. The operator may not sell or distribute live fish, except to a food processing plant, retail food establishment or restaurant. However, the operator may allow public fishing for a fee.
- Type 2: The holder of a type 2 registration certificate may operate a fish farm, and may engage in any of the activities authorized under a type 1 certificate. In addition, the operator may sell or distribute live fish from the fish farm.

Expiration Date

A fish farm registration certificate issued under this emergency rule expires on December 31, 1999.

Persons Operating 2 or More Fish Farms

Under this emergency rule, a person who operates 2 or more fish farms must obtain a separate registration certificate for each fish farm. A person may register 2 or more fish farms by filing a single application and paying a single fee. There is no additional fee for additional fish farms.

Applying for a Registration Certificate

To obtain or renew a registration certificate, a fish farm operator must file an application with DATCP. The application must include:

- The name, address and telephone number of the fish farm operator.
 - The fish farm location.
 - The required fee (see below).
 - The name, address and telephone number of the individual responsible for administering the fish farm on behalf of the operator, if other than the operator.
 - Each species of fish hatched or kept at the fish farm.
 - A description of the fish farm, including fish farm facilities and activities.
 - A statement indicating whether the operator seeks a type 1 or type 2 registration certificate.
- DATCP must grant or deny an application for a fish farm registration certificate within 30 days after the department receives a complete application.

Registration Fees

An operator must pay the following fee to register one or more fish farms:

- A total fee of \$25.00 if the operator registers all of the fish farms as type 1 fish farms.
- A total fee of \$50.00 if the operator registers any of the fish farms as a type 2 fish farm.

The following persons are exempt from fish farm registration fees:

- A bona fide scientific research organization that is operating a fish farm solely for the purpose of scientific research.
- A primary or secondary school.
- The state of Wisconsin and its agencies.

A person applying for a fish farm registration certificate must pay, in addition to the normal registration fee, a surcharge equal to the amount of that fee if DATCP determines that, within 365 days prior to submitting an application, the applicant operated a fish farm without a required registration certificate.

Denying, Suspending or Revoking a Registration Certificate

DATCP may deny, suspend or revoke a fish farm registration certificate for cause. Grounds include:

- Filing an incomplete or fraudulent application, or misrepresenting any information on an application.
- Violating ch. 95, Stats., or department rules.
- Violating the terms of the registration certificate.
- Interfering with inspection.
- Failing to keep or provide required records.

Live Fish Imports

Import Permit Required

This emergency rule prohibits any person from importing into this state, without a permit from DATCP, live fish or fish eggs for any of the following purposes:

- Introducing them into the waters of the state.
- Selling them as bait, or for resale as bait.
- Rearing them at a fish farm, or selling them for rearing at a fish farm.

A copy of the import permit must accompany every import shipment. An import permit may authorize multiple import shipments. There is no fee for an import permit. A person importing a non–native species of fish or fish eggs must also obtain a permit from the department of natural resources.

Import Permit Contents

An import permit must specify all of the following:

- The expiration date of the import permit. An import permit expires on December 31 of the year in which it is issued, unless DATCP specifies an earlier expiration date.
- The name, address and telephone number of the permit holder who is authorized to import fish or fish eggs under the permit.
- The number of each fish farm registration certificate, if any, held by the importer.
- Each species of fish or fish eggs which the importer is authorized to import under the permit.
- The number and size of fish of each species, and the number of fish eggs of each species, that the importer may import under the permit.
- The purpose for which the fish or fish eggs are being imported.
- The name, address and telephone number of every source from which the importer may import fish or fish eggs under the permit.
- The name, address, telephone number, and fish farm registration number if applicable, of each person in this state who may receive an import shipment under the permit if the person receiving the import shipment is not the importer.

Applying for an Import Permit

A person seeking an import permit must apply on a form provided by DATCP. The application must include all of the following:

- All of the information which must be included in the permit (see above).
- A health certificate for each source from which the applicant proposes to import fish or fish eggs of the family salmonidae.

DATCP must grant or deny a permit application within 30 days after it receives a complete application and, in the case of non–native fish, DNR approval.

Denying, Suspending or Revoking an Import Permit

DATCP may deny, suspend or revoke an import permit for cause, including any of the following:

- Violating applicable statutes or rules.
- Violating the terms of the import permit, or exceeding the import authorization granted by the permit.
- Preventing a department employee from performing his or her official duties, or interfering with the lawful performance of his or her duties.
- Physically assaulting a department employee while the employee is performing his or her official duties.
- Refusing or failing, without just cause, to produce records or respond to a department subpoena.

Import Records

A person importing fish or fish eggs must keep all of the following records related to each import shipment, and must make the records available to the department for inspection and copying upon request:

- The date of the import shipment.
- The name, address and telephone number of the source from which the import shipment originated.

- The name, address, telephone number, and fish farm registration number if applicable of the person receiving the import shipment, if the person receiving the import shipment is not the importer.
- The location at which the import shipment was received in this state.
- The size, quantity and species of fish or fish eggs included in the import shipment.

Salmonidae Import Sources: Health Certificates

DATCP may not issue a permit authorizing any person to import fish or fish eggs of the family salmonidae (including trout, salmon, grayling, char, Dolly Vardon, whitefish, cisco or inconnu) unless a fish inspector or an accredited veterinarian certifies, not earlier than January 1 of the year preceding the year in which the applicant applies for the permit, that the fish and fish eggs from the import source were determined to be free of all of the following diseases:

- Infectious hematopoietic necrosis.
- Viral hemorrhagic septicemia.
- Whirling disease, except that eggs from wild stocks need not be certified free of whirling disease.
- Enteric redmouth.
- Ceratomyxosis.

A fish inspector issuing a health certificate must be a fish biologist who is certified, by the American Fisheries Society or the state of origin as being competent to perform health inspections of fish.

The accredited veterinarian or fish inspector must issue a health certificate in the state of origin, based on a personal inspection of the fish farm from which the import shipment originates. In the inspection, an accredited veterinarian or a fish inspector must examine a random statistical sample of fish drawn from each lot on the fish farm. From each lot, the veterinarian or inspector must examine a number of fish which is adequate to discover, at the 95% confidence level, any disease that has infected 5% of the lot.

Fiscal Estimate

The complete fiscal note is available on request.

For purposes of this fiscal estimate, it is estimated that 2,400 fish farms will register with the department during 1999. These farms will register under one of two types; it is estimated that 2,250 will register as type 1 and 150 will register as type 2.

Revenue:

Per s. 95.60, Stats., the department shall specify the fee for registration of a fish farm. This proposal would establish a 1999 registration fee of \$25 for a type 1 registration and \$50 for a type 2 registration. These fees are applicable as of January 1, 1999, for the calendar year 1999. Any fish farm registered by the department in 1998 is eligible for renewal with the department in 1999. Revenue for 1999 is estimated at \$63,800. Revenues from the fish farm registrations will be used to administer the fish farm program within the Division of Animal Health. In addition to these proposed program revenues, \$265,000 of GPR funds and 5.0 FTE positions have been appropriated to support the program within the division (for 1998-99, \$97,900 and 2.0 FTE are frozen).

Expense:

Administrative expense will be incurred by the department in providing a fish farm aquaculture program. The department will register fish farms, issue permits for the importation of live fish or fish eggs, provide veterinary services and fish related lab work, inspect fish farms, perform investigatory and enforcement activities and provide educational and technical assistance to the public by providing information on various aspects of the program, on rules and regulations related to fish farming and on aquaculture in general. Expenses for 1999 are estimated at \$328,800 with 5.0 FTE positions.

Initial Regulatory Flexibility Analysis

General Overview

This rule establishes policies and procedures for the department of agriculture, trade and consumer protection to implement 1997 Wisconsin Act 27 which transferred the primary authority for regulating fish farms from the department of natural resources to the department of agriculture, trade and consumer protection.

This rule will affect small businesses in Wisconsin. It includes provisions which relate to small businesses engaged in farming fish and importing live fish and fish eggs into Wisconsin.

Fish Farm Registration

The statute requires that any person who operates a fish farm must annually register the fish farm with the department. This rule identifies two categories of fish farms that must register and imposes registration fees, as follows:

- Type 1 (\$25 fee): The holder of a type 1 registration certificate may operate a fish farm. The operator may not sell or distribute live fish, except to a food processing plant, retail food establishment or restaurant. However, the operator may allow public fishing for a fee.
- Type 2 (\$50 fee): The holder of a type 2 registration certificate may operate a fish farm and may engage in any of the activities authorized under a type 1 certificate. In addition, the operator may sell or distribute live fish and fish eggs from the fish farm.

All private fish hatcheries previously licensed by the department of natural resources in 1997 were eligible for renewal with the department of agriculture, trade and consumer protection in 1998. This emergency rule establishes a registration system for 1999 as proposed in the department's permanent rules for fish farms. In registering, fish farm operators will need to complete a form providing owner and custodian name and address and fish farm information such as the species of fish kept on the fish farm and a description of the fish farm.

About 2,400 fish farms scattered across Wisconsin will be affected by the fish farm requirements in this rule. These farms were previously registered by the department by completing a registration application form and paying a fee (\$5, \$25 or \$50 depending upon the classification). Under this emergency rule, the fees are \$25 for a type 1 and \$50 for a type 2 registration. Most small business fish farms will have no change in fees. A few will have a reduction, since only one fee payment is required regardless of how many locations are being registered (previously, a \$5 fee was accessed for each additional location).

Fish Imports

The statute requires any person who brings live fish or fish eggs into this state for the purpose of introduction into the waters of the state, of use as bait or of rearing in a fish farm to have an annual permit issued by the department of agriculture, trade and consumer protection. The permit may authorize multiple import shipments. A copy of the permit must accompany every import shipment. In addition, imports on non-native species must also be approved by the department of natural resources. There is no fee for an import permit.

In requesting an import permit, a person will need to complete a form providing name and address information of the requester, fish farm registration number, if applicable, the size, quantity and species of fish or fish eggs to be imported, source location information and destination information.

The statute also requires any person bringing fish or fish eggs of the family salmonidae (including trout, salmon, grayling, char, Dolly Varden, whitefish, cisco or inconnu) into this state for the purpose of introduction into the waters of the state to have those fish or fish eggs certified. In requesting an import permit, a person will need to provide a health certificate for each source from which the requester proposes to import fish or fish eggs of the family salmonidae, certifying the source to be free of 5 specific diseases.

The rule requires a person importing live fish or fish eggs to maintain records relating to each import shipment, including the import source, the import destination, and the size, quantity and species of fish or fish eggs imported.

Under the department of natural resources a person importing live fish and fish eggs had to acquire a permit and for fish or fish eggs in the family salmonidae, had to provide health certification for 5 specific diseases. The department of agriculture, trade and consumer protection, under this emergency rule, is continuing the same practice. Therefore since these rule requirements were already in place, this rule provision does not add costs for the business person. The requirement to maintain import records will add minimal costs since these records are standard business operational records.

Notice of the proposed rule has been delivered to the department of development, as required by s. 227.114(5), Stats.

A copy of the emergency rule to be considered may be obtained, free of charge, from:

Animal Health Division
Wis. Dept. of Agriculture, Trade & Consumer Protection
P. O. Box 8911
Madison, WI 53708-8911

Notice of Hearing

Commerce

(Public Swimming Pools, Ch. Comm 90)

Notice is hereby given that pursuant to ss. 227.14 (4m) and 227.17, Stats., the Department of Commerce announces that it will hold a public hearing on proposed rules relating to the design and construction of public swimming pools.

Hearing Information

January 27, 1999
Wednesday
10:00 a.m.

WHEDA Bldg., Room 3C
201 W. Washington Ave.
Madison, WI

Interested persons are invited to appear at the hearing and present comments on the proposed rules. Persons making oral presentations are requested to submit their comments in writing. Persons submitting comments will not receive individual responses. The hearing record on this proposed rulemaking will remain open until **February 10, 1999**, to permit submittal of written comments from persons who are unable to attend a hearing or who wish to supplement testimony offered at a hearing.

This hearing is held in an accessible facility. If you have special needs or circumstances that may make communication or accessibility difficult at the hearing, please call (608) 261-6546 or TTY at (608) 264-8777 at least 10 days prior to the hearing date. Accommodations such as interpreters, English translators, or materials in audio tape format will, to the fullest extent possible, be made available upon request by a person with a disability.

Analysis of Rules

Statutory authority: s. 145.26

Statute interpreted: s. 145.26

This rule revision was created in response to issues brought to the attention of the Joint Committee for Review of Administrative Rules, by the Bed and Breakfast Industry. The proposed revisions are specific to provisions for drinking water sources at pools, pool rim dimensions, and observation windows, as well as providing exceptions for the tourist industry where health and safety are not considered to be compromised. The proposed rule revisions were developed by the department with advice from the Pool Advisory Code Council who met on three occasions on this rule package. The Council consists of: Dave Baker, pool operators; Bill Branson, plumbing inspectors; Bob Holling, City of Sun Prairie – Parks; Duane Jackson, City of Madison – Environmental Health; Hal Maier, pool contractors; Tim Mirkes, City of Appleton – Health; Chuck Neuman, Water World Park Assoc.; Doug Voegeli, Wisconsin DHFS; and Jack Waterman, Wisconsin Innkeepers Assoc.

A copy of the proposed rules may be obtained without cost from **Roberta Ward**, Department of Commerce, Program Development Bureau, P.O. Box 2689, Madison, Wisconsin 53701, telephone (608) 266-9375 or (608) 266-8741 (TTY). Copies will also be available at the public hearing.

Environmental Analysis

Notice is hereby given that the Department has considered the Environmental impact of the proposed rules. In accordance with chapter ILHR 1, the proposed rules are a Type III action. A Type III action normally does not have the potential to cause significant Environmental effects and normally does not involve unresolved conflicts in the use of available resources. The Department has reviewed these rules and finds no reason to believe that any unusual conditions exist. At this time, the Department has issued this notice to serve as a finding of no significant impact.

Initial Regulatory Flexibility Analysis

1. Types of small businesses that will be affected by the rules.

The rule changes will allow bed and breakfast establishments and tourist rooming houses to forego the expense of installing a drinking fountain in swimming pool or whirlpool areas. This will eliminate the cost of this installation. Another cost savings is related to the exception for private guest rooms from the observation window requirement for whirlpools located in private guest rooms when a telephone is available.

2. Reporting, bookkeeping and other procedures required for compliance with the rules.

No new requirements known.

3. Types of professional skills necessary for compliance with the rules.

No changes in professional skills are required.

Fiscal Estimate

There is no fiscal effect.

Notice of Hearing ***Public Service Commission***

Notice is hereby given that a hearing will be held at the time and place indicated below to consider a revision to ch. PSC 135, Wis. Adm. Code, relating to gas safety.

Hearing Information

Notice is given that a hearing will be held beginning on:

<u>Hearing Date:</u>	<u>Hearing Location</u>
February 2, 1999 Tuesday 9:00 a.m.	Amnicon Falls Hrg. Room PSC Building 610 North Whitney Way MADISON, WI

and continuing at times to be set by the presiding Hearing Examiner. This building is accessible to people in wheelchairs through the Whitney Way first floor (lobby) entrance. Parking for people with disabilities is available on the south side of the building. Any person with a disability who needs additional accommodations should contact the case coordinator listed below.

The Commission does not discriminate on the basis of disability in the provision of programs, services, or employment. Any person with a disability who needs accommodations to participate in this proceeding or who needs to get this document in a different format should contact the case coordinator listed below.

Written Requests

Persons who desire to actively participate as full parties must request full party status in writing. Full party status requests should be addressed to:

Jeff Patzke, Hearing Examiner
Examining Division
Public Service Commission of Wisconsin
P.O. Box 7854
Madison, WI 53707-7854

This is not a contested case but will be conducted according to the procedures for Class 1 proceedings as defined in s. 227.01 (3) (a), Stats.

Contact Information

Questions regarding this matter may be directed to case coordinator John Lorence at (608) 266-8128.

Analysis Prepared by the Public Service Commission of Wisconsin

Statutory authority: ss. 196.02 (3), 196.745 (1) and 227.11

Statute interpreted: s. 196.745 (1)

Under a grant agreement with the federal Department of Transportation, Office of Pipeline Safety, the Public Service Commission of Wisconsin (Commission) administers the gas pipeline safety program in this state. As one of the requirements of the federal program, the state is to adopt the federal pipeline safety regulations. The relevant regulations are promulgated in 49 CFR Parts 192, 193 and 199. These federal regulations cover minimum pipeline safety standards, safety standards for liquefied natural gas facilities, and drug and alcohol testing, respectively.

Previously, the Commission practice has been to adopt the actual text of these federal regulations in a state rule, ch. PSC 135. However, the Office of the Revisor of Statutes informed the Commission that the federal numbering and formats do not comply with Wisconsin drafting conventions. Rather than attempt to renumber and reformat the federal regulations into Wisconsin style, the Commission proposes that the federal regulations be adopted by reference. In addition to conforming ch. PSC 135 to the required format, adoption by reference will streamline the process for Commission adoption of federal amendments to pipeline safety regulations in the future. The proposed revisions reflect the incorporation by reference drafting convention.

This revision also effectively adopts federal amendments to the regulations that have been promulgated since the last time the Commission updated these rules. Adoption of these amendments will bring the Commission into compliance with its obligation to adopt all federal changes in the pipeline safety area. All federal amendments to the pipeline safety rules promulgated since 1989 are adopted by this proposal. This includes federal amendments 61A to 84 amending 49 CFR 192, federal amendments 6 to 15 amending 49 CFR 193, and federal amendments 2 to 18 amending 49 CFR 199.

Over the years, the Commission also promulgated state additions to the federal regulations. State additions are appropriate provided they do not abrogate the federal regulations. In these revisions, the existing state additions are retained and explicitly set out in proposed subchapter II. The draft also modifies several of the state additions, notably with respect to leak survey requirements, time for removal of service lines and requirements for construction under rail crossings.

Text of Rule

SECTION 1. Chapter PSC 135 is repealed and recreated to read:

Chapter PSC 135

GAS SAFETY

Subchapter I – General Provisions

PSC 135.01 Character of construction, maintenance, and operation. All gas transmission, distribution, and utilization equipment and facilities shall be constructed, installed, operated, and maintained in a reasonably adequate and safe manner and as a minimum more specifically provided for in this chapter.

PSC 135.02 Facilities, inspection and repairs. All facilities shall be cleaned when necessary and inspected at such intervals as experience has shown to be necessary. Any facilities known to be defective so as to endanger life or property shall be promptly repaired, permanently disconnected, or isolated until repairs can be made. Construction, repairs, additions, and changes to gas transmission and distribution facilities shall be made by qualified persons only.

PSC 135.03 Application of rules. Every gas utility that operates gas transmission or distribution facilities in this state shall comply with the rules in this chapter.

(1) **WAIVING RULES.** The rules may be modified or waived by the public service commission. They may be so modified or waived in particular cases wherever shown to be impracticable for special reasons or where the advantage of uniformity with existing construction is greater than the advantage of construction in compliance with the rules providing the existing construction is reasonably safe or if equivalent or safer construction is secured in other ways.

(2) **TEMPORARY INSTALLATIONS.** It may sometimes be necessary to modify or waive certain of the rules in case of temporary installations or installations which are shortly to be dismantled or reconstructed. Such temporary construction may be used for a reasonable length of time provided it is under competent supervision while it or adjoining equipment is under pressure or if it is protected by suitable barriers or warning signs when accessible to any person, without fully complying with this chapter; but all such construction shall be made reasonably safe.

(3) EMERGENCY. In case of emergency or pending decision of the public service commission, the person responsible for the installation may decide as to modification or waiver of any rule or order, subject to review by the public service commission.

PSC 135.04 Protection of gas pipeline facilities. A gas pipeline operator, upon receiving notice as provided in s. 66.047, Stats., or s. 182.0175(2m), Stats., of work which may affect its facilities used for serving the public shall:

(1) If the notice is of work covered by s. 66.047, Stats., investigate and decide what action, if any, must reasonably be taken to protect or alter utility facilities in order to protect service to the public and to avoid unnecessary damage. The gas pipeline operator shall take such action as is reasonably necessary to protect, remove, alter, or reconstruct its facilities, and shall perform such work with reasonable dispatch taking into account the conditions to be met. Nothing in this rule shall be deemed to affect any right which the gas pipeline operator may have to require advance payment or adequate assurance of payment of the reasonable cost thereof to the gas pipeline operator by the property owner or contractor.

(2) If the notice is of work covered by s. 182.0175 (2m), Stats., and is not covered by s. 66.047, Stats., the gas pipeline operator shall respond as required by s. 182.0175 (2m), Stats.

(3) The gas pipeline operator may, in order to protect its interests, require that the owner or contractor perform certain work upon that part of the service piping or wiring on or being removed from the property upon which the excavating, building, or wrecking operations are being performed.

(4) This section is not intended to affect the responsibility of the contractor or owner, or the liability or legal rights of any party.

PSC 135.05 Interference with gas pipeline facilities. (1) A gas pipeline operator having any work upon, over, along, or under any public street, highway or private property near existing gas pipeline facilities shall give reasonable notice to another public utility or operator and shall exercise care when working in close proximity to such existing facilities. Sections 66.047 and 182.0175, Stats., shall be observed where applicable. In all other cases such notice shall provide another public utility or operator with a reasonable opportunity to protect or alter its facilities and such work shall not proceed without an agreement concerning the location and nature of the proposed work.

(2) Nothing in sub. (1) shall prevent a gas pipeline operator from proceeding as quickly as possible with any emergency construction work which might interfere with existing facilities.

PSC 135.06 Leak survey reports. The federal department of transportation, office of pipeline safety, requires each operator of a distribution system or of a transmission system to submit an annual report for the preceding calendar year not later than March 15. The operators of such systems in this state shall submit a copy of these reports to the public service commission on or before the filing date as required by the federal regulations. In addition to this annual report and at the same time, the operators shall report the number of leaks which were found in customer-owned facilities by either a survey or complaint during the preceding calendar year.

PSC 135.07 Over-pressure protection. Over-pressure protection is required by 49 CFR s. 192.197 and shall apply to all installations in this state.

PSC 135.09 Adoption of federal minimum pipeline safety standards by reference. (1) The federal department of transportation, office of pipeline safety, pipeline safety standards, as adopted through December 10, 1998, and incorporated in 49 CFR Parts 192, 193 and 199, including the appendices, are adopted as state pipeline safety standards and incorporated by reference into this chapter.

(2) State additions to the federal pipeline safety standards are shown in subchapter II.

(3) Pursuant to s. 227.21, Stats., the attorney general and the revisor of statutes have consented to the incorporation by reference of the provisions in 49 CFR Parts 192, 193 and 199, including the appendices. Copies on file at the office of the public service commission, the secretary of state and the revisor of statutes.

(4) All gas public utilities and gas pipeline operators shall file with the Public Service Commission a copy of the manual of written procedures for conducting operations and maintenance activities and for emergency response required under 49 CFR s. 192.605 (a). Each change in the manual shall be filed with this commission within 20 days after the change is made.

Subchapter II – Additions to 49 CFR Part 192

PSC 135.201 49 CFR s. 192.53 Additions. (1) After 49 CFR s. 192.53 (a), insert:

(aw) Some of the materials conforming to specifications approved for use under this code may not have properties suitable for the lower portion of the temperature band covered by this code. Engineers are cautioned to give attention to the low-temperature properties of the materials used for facilities to be exposed to unusually low ground temperatures or low atmospheric temperatures. Twenty (20) inch steel pipe and larger, with a specified minimum yield strength of 52,000 p.s.i. or higher, shall be tested for fracture toughness in accordance with the applicable section of respective API standard under which it was produced, except for small lot purchases of pipe where testing for fracture toughness is impractical.

(2) After 49 CFR s. 192.53 (c) insert:

(dw) When substantial quantities of pipe are acquired certified reports of chemical composition and physical properties shall be obtained; when the quantity of pipe involved is so limited that this requirement would be impractical, a certified statement shall be obtained setting forth the specification under which the pipe was manufactured.

PSC 135.202 49 CFR s. 192.55 Addition. After 49 CFR s. 192.55 (e), insert:

(fv) Pipe manufactured from steel made by the Bessemer process shall not be used.

PSC 135.203 49 CFR s. 192.125 Addition. After 49 CFR s. 192.125 (d), insert:

(ew) Fittings in copper piping. It is recommended that fittings in copper piping and exposed to the soil, such as service tees, pressure control fittings, etc., be made of bronze, copper or brass.

PSC 135.204 49 CFR s. 192.163 Additions. (1) After 49 CFR s. 192.163 (b), insert:

(bw) All compressor station buildings shall be constructed of non-combustible materials as defined by the Wisconsin state building code administered by the Department of Commerce.

(2) After 49 CFR s. 192.163 (c), insert:

(cw) Exits shall be provided in compliance with the requirements of the Wisconsin state building code administered by the Department of Commerce. Ladders shall not be used for exits.

- (3) After 49 CFR s. 192.163 (e), insert:
 - (ew) All electrical equipment and wiring installed in gas transmission and distribution compressor stations shall conform to the requirements of the Wisconsin state electrical code.
- PSC 135.205 49 CFR s. 192.171 Addition.** After 49 CFR s. 192.171 (a), insert:
 - (aw) Fire protection. Fire-protection facilities shall be provided as specifically directed by the Department of Commerce and the local fire department. The operation of fire-protection facilities, such as pumps, shall not be affected by an emergency shutdown.
- PSC 135.206 49 CFR s. 192.173 Addition.** After the text in 49 CFR s. 192.173, insert:
 - (1w) There shall be compliance with the Department of Commerce heating, ventilation, and air conditioning code.
- PSC 135.207 49 CFR s. 192.181 Addition.** After 49 CFR s. 192.181 (b), insert:
 - (bw) It is intended that the distance between the valve and the regulator or regulators shall be sufficient to permit the operation of the valve during an emergency such as a large gas leak or a fire in the station. These valves shall be in accessible locations not closer than 25 feet and preferably not more than 1,500 feet distant from each regulator station.
- PSC 135.208 49 CFR s. 192.183 Additions.** After 49 CFR s. 192.183 (c), insert:
 - (dw) In the design of vaults and pits for pressure limiting, pressure relieving and pressure regulating equipment, consideration shall be given to the protection of the installed equipment from damage, such as that resulting from an explosion within the vault or pit, which may cause portions of the roof or cover to fall into the vault.
 - (ew) Vault or pit openings shall be located so as to minimize the hazards of tools or other objects falling upon the regulator, piping, or other equipment. The control piping and the operating parts of the equipment installed shall not be located under a vault or pit opening where workers can step on them when entering or leaving the vault or pit, unless such parts are suitably protected. Whenever a vault or pit opening is to be located above equipment which could be damaged by a falling cover, a circular cover should be installed or other suitable precautions taken.
- PSC 135.209 49 CFR s. 192.187 Addition.** After 49 CFR s. 192.187 (a) (3), insert:
 - (4w) The outside end of the ducts shall be equipped with a suitable weatherproof fitting or vent-head designed to prevent foreign matter from entering or obstructing the duct. The effective area of the openings in such fittings or vent-heads shall be at least equal to the cross-sectional area of a 4-inch duct. The horizontal section of the ducts shall be as short as practical and shall be pitched to prevent the accumulation of liquids in the line. The number of bends and offsets shall be reduced to a minimum and provisions shall be incorporated to facilitate the periodic cleaning of the ducts.
- PSC 135.210 49 CFR s. 192.189 Additions.** (1) After 49 CFR s. 192.189 (a), insert:
 - (aw) Nevertheless, vault equipment shall always be designed to operate safely, if submerged.
 (2) After 49 CFR s. 192.189 (c), insert:
 - (cw) Electrical equipment in vaults shall conform to the applicable requirements of the Wisconsin state electrical code.
- PSC 135.211 49 CFR s. 192.195 Additions.** After 49 CFR s. 192.195 (b) (2), insert:
 - (3w) Suitable types of protective devices to prevent overpressuring of high-pressure distribution systems include:
 - (i) Spring-loaded relief valves of types meeting the provisions of the ASME Unfired Pressure Vessel Code.
 - (ii) Pilot-loaded back-pressure regulators used as relief valves, so designed that failure of the pilot system or control lines will cause the regulator to open.
 - (iii) Spring loaded diaphragm-type relief valves.
 - (iv) A monitoring regulator installed in series with the primary pressure regulator.
 - (v) A series regulator installed upstream from the primary regulator, and set to continuously limit the pressure on the inlet of the primary regulator in accordance with the provisions of 49 CFR s. 192.201.
 - (vi) An automatic shut-off device installed in series with the primary pressure regulator, and set to shut off in accordance with the provisions of 49 CFR s. 192.201. This device must remain closed until manually reset. It should not be used where it might cause an interruption in service to a large number of customers.
 - (4w) Suitable types of protective devices to prevent overpressuring of low-pressure distribution systems include:
 - (i) A liquid seal relief device that can be set to open accurately and consistently at the desired pressure.
 - (ii) A series regulator as described in s. PSC 135.211, in (3w) (v).
 - (iii) An automatic shut-off device as described in s. PSC 135.211, in (3w) (vi).
 - (iv) A pilot loaded back-pressure regulator as described in s. PSC 135.211, in (3w) (ii).
 - (v) A monitoring regulator as described in s. PSC 135.211, in (3) (iv).
- (cw) Suitable types of protective devices to prevent overpressuring of gas pressure holders, pipelines and other facilities that might at times be bottle tight include:
 - (1) Spring-loaded relief valves of types meeting the provisions of the ASME Unfired Pressure Vessel Code.
 - (2) Pilot-loaded back-pressure regulators used as relief valves, so designed that failure of the pilot system or control lines will cause the regulator to open.
- PSC 135.212 49 CFR s. 192.197 Additions.** After 49 CFR s. 192.197 (c), insert:

(dw) The service regulator must be of a type that is capable under normal operating conditions of regulating the downstream pressure within the limits of s. PSC 134.23 and of limiting the build-up of pressure under no-flow conditions of 50 percent or less of the discharge pressure maintained under flow conditions.

(ew) In addition to the provisions of 49 CFR s. 192.197 (a) and (b), if the maximum actual operating pressure of the distribution system is greater than low pressure and is equal to or less than 60 p.s.i.g., a suitable protective device shall be installed to prevent unsafe overpressuring of the customer's appliances should the service regulator fail. These devices may be installed as an integral part of the service regulator or as a separate unit. Some of the suitable types of protective devices to prevent overpressuring of customers' appliances are:

- (1) A monitoring regulator.
- (2) A relief valve.
- (3) An automatic shut-off device.

(fw) Breather vents shall be provided on all service regulators.

PSC 135.213 49 CFR s. 192.199 Additions. (1) After 49 CFR s. 192.199 (e), insert:

(ew) In addition, the outlet ports must be insect-proof and consideration should be given to all exposures in the immediate vicinity including windows or locations where gas can enter confined areas;

(2) After 49 CFR s. 192.199 (h), insert:

(hw) Acceptable methods for complying with 49 CFR s. 192.199 (h) are:

(1) Lock the stop valve in the open position. Instruct authorized personnel of the importance of not inadvertently leaving the stop valve closed and of being present during the entire period that the stop valve is closed so that they can lock it in the open position before they leave the location.

(2) Install duplicate relief valves, each having adequate capacity by itself to protect the system and arrange the isolating valves or 3-way valve so that mechanically it is possible to render only one safety device inoperative at a time.

(iw) Precautions shall be taken to prevent unauthorized operation of any valve which will make pressure limiting devices inoperative. This provision applies to isolating valves, by-pass valves, and valves on control or float lines which are located between the pressure limiting device and the system which the device protects. A method similar to s. PSC 135.xxx, in (hw), shall be considered acceptable in complying with this provision.

PSC 135.214 49 CFR s. 192.204w Addition. After 49 CFR s. 192.203, insert:

192.204w Pipelines on private right-of-way of electric transmission lines. Where gas pipelines parallel overhead electric transmission lines on the same right-of-way, the company operating the pipelines shall take the following precautions:

(a) Employ blow-down connections and relief valve vents that will direct the gas away from the electric conductors.

(b) Make a study in collaboration with the electric company on the common problems of corrosion and electrolysis, taking the following factors into consideration:

- (1) The possibility of the pipeline carrying either unbalanced line currents or fault currents.
- (2) The possibility of lightning or fault currents inducing voltages sufficient to puncture pipe coatings or pipe.
- (3) Cathodic protection of the pipeline, including location of ground beds, especially if the electric line is carried on steel towers.
- (4) Bonding connections between the pipeline and either the steel tower footings or the buried ground facilities or the ground-wire of the overhead electric system.

(c) Investigate the necessity of protecting insulating joints in the pipeline against induced voltages or currents resulting from lightning strokes. Such protection can be obtained by connecting buried sacrificial anodes to the pipe near the insulating joints or by bridging the pipeline insulator with a spark-gap or by other effective means.

PSC 135.216 49 CFR s. 192.246w Addition. After 49 CFR s. 192.245, insert:

PSC 192.246w Precautions to avoid explosions of gas-air mixtures or uncontrolled fires during construction operations. (a) Operations such as gas or electric welding and cutting with cutting torches can be safely performed on pipelines and mains and auxiliary equipment, provided that they are completely full of gas, or air that is free from combustible material. Steps shall be taken to prevent a mixture of gas and air at all points where such operations are to be performed.

(b) When a pipeline or main can be kept full of gas during a welding or cutting operation, the following procedures are recommended:

- (1) Keep a slight flow of gas moving toward the point where cutting or welding is being done.
- (2) The gas pressure at the site of the work shall be controlled by suitable means.
- (3) Close all slots or open ends immediately after they are cut with tape, and/or tightly fitting canvas or other suitable material.
- (4) Do not permit two openings to remain uncovered at the same time. This is doubly important if the two openings are at different elevations.

(c) No welding or acetylene cutting shall be done on a pipeline, main, or auxiliary apparatus that contains air if it is connected to a source of gas, unless a suitable means has been provided to prevent the leakage of gas into the pipeline or mains.

(d) In situations where welding or cutting must be done on facilities which are filled with air and connected to a source of gas and the precautions recommended above cannot be taken, one or more of the following precautions, depending upon the circumstances at the job are required:

- (1) Purging of the pipe or equipment upon which welding or cutting is to be done, with combustible gas or inert gas.

- (2) Testing of the atmosphere in the vicinity of the zone to be heated before the work is started and at intervals as the work progresses, with a combustible gas indicator or by other suitable means.
 - (3) Careful verification before the work starts that the valves that isolate the work from a source of gas do not leak.
- PSC 135.217 49 CFR s. 192.279 Addition.** After the text in 49 CFR s. 192.279, insert:
- (1w) Copper pipe shall be joined by using either a compression type coupling or a brazed or soldered lap joint. The filler material used for brazing shall be a copper–phosphorous alloy or silver base alloy. Butt welds are not permissible for joining copper pipe or tubing.
- PSC 135.218 49 CFR s. 192.307 Addition.** After the text in 49 CFR s. 192.307, insert:
- (1w) Detection of gouges and grooves. The field inspection provided on each job shall be suitable to reduce to an acceptable minimum the chances that gouged or grooved pipe will get into the finished transmission line or main. Inspection for this purpose just ahead of the coating operation and during the lowering in and backfill operation is required.
- PSC 135.219 49 CFR s. 192.309 Addition.** After 49 CFR s. 192.309 (e), insert:
- (fw) Due primarily to climate conditions, gouges, grooves, notches, and dents have been found to be an important cause of steel pipe failures and an attempt shall be made to prevent or eliminate harmful defects of this nature. Subsection 192.309 (b) pertains to transmission lines and mains intended to operate at hoop stresses of 20 percent or 40 percent or more of the specified minimum yield strength. However, applicable portions of these paragraphs should also be applied to facilities intended to operate below this hoop stress level.
- PSC 135.220 49 CFR s. 192.319 Additions.** (1) After 49 CFR s. 192.319 (a), insert:
- (aw) This includes grading the ditch so that the pipe has a firm, substantially continuous bearing on the bottom of the ditch. When long sections of pipe that have been welded alongside the ditch are lowered in, care shall be exercised so as not to jerk the pipe or impose any strains that may kink or put a permanent bend in the pipe.
- (2) After 49 CFR s. 192.319 (b) (2), insert:
 - (3w) If there are large rocks in the material to be used for backfill, care should be used to prevent damage to the coating or pipe by such means as the use of rock shield material, or by making the initial fill with rock free material to a sufficient depth over the pipe to prevent rock damage.
 - (4w) Where flooding of the trench is done to consolidate the backfill, care shall be exercised to see that the pipe is not floated from its firm bearing on the trench bottom.
 - (3) After 49 CFR s. 192.319 (c), insert:
 - (cw) The provisions of 49 CFR s. 192.319 (a) shall also apply to mains operating at less than 20% of the SMYS.
- PSC 135.221 49 CFR s. 192.321 Additions.** After 49 CFR s. 192.321 (f), insert:
- (fw) The casing pipe shall be reamed and cleaned to the extent necessary to remove any sharp edges, projections, or abrasive material which could damage the plastic during and after insertion. That portion of the plastic piping which spans disturbed earth shall be adequately protected by a bridging piece or other means from crushing or shearing from external loading or settling of backfill. Care shall be taken to prevent the plastic piping from bearing on the end of the casing.
 - (gw) Care shall be exercised to avoid rough handling of plastic pipe and tubing. It shall not be pushed or pulled over sharp projections, dropped or have other objects dropped upon it. Caution shall be taken to prevent kinking or buckling, and any kinks or buckles which occur shall be removed by cutting out as a cylinder.
 - (hw) Changes in direction of plastic piping may be made with bends, tees or elbows under the following limitations:
 - (1) Plastic pipe and tubing may be deflected to a radius not less than the minimum recommended by the manufacturer for the kind, type, grade, wall thickness and diameter of the particular plastic used.
 - (2) The bends shall be free of buckles, cracks, or other evidence of damage.
 - (3) Changes in direction that cannot be made in accordance with s. PSC 135.221, 192.321 (hw) (1), shall be made with elbow–type fittings.
 - (4) Miter bends are not permitted.
 - (iw) Plastic piping shall be laid on undisturbed or well compacted soil. If plastic piping is to be laid in soils which may damage it, the piping shall be protected by suitable rock free materials before back–filling is completed. Plastic piping shall not be supported by blocking. Well tampered earth or other continuous support shall be used.
- PSC 135.222 49 CFR s. 192.323 Addition.** After 49 CFR s. 192.323 (d), insert:
- (ew) Casing requirements of highway authorities shall be followed; however, construction type shall not be any less than provided by this code.
- PSC 135.223 49 CFR s. 192.324w Addition.** After 49 CFR s. 192.323, insert:
- PSC 192.324w Rail crossings.** Whenever a steel pipeline is installed under a railroad track and a casing is not used, the operator shall install the pipeline using the methods prescribed in Gas Research Institute report number GRI–91/0285, entitled “Guidelines for Pipelines Crossing Railroads and Highways.”
- PSC 135.224 49 CFR s. 192.325 Addition.** After 49 CFR s. 192.325 (b), insert:
- (bw) If the structure is a public building where people assemble or in areas such as playground, assembly ground, or park, wherever possible the clearance shall be at least 100 feet if the main is operated at more than 100 p.s.i. but less than 500 p.s.i. and shall be at least 150 feet if operated at 500 p.s.i. or more. If these clearances cannot be maintained, then the next higher type of construction shall be used except such construction may be pressure–tested the same as the remainder of the line. No distribution main or transmission line shall be installed under buildings.
- PSC 135.225 49 CFR s. 192.355 Additions.** (1) After 49 CFR s. 192.355 (a), insert:
- (aw) Install a check valve or equivalent if:

- (1) The utilization equipment might induce a back–pressure.
- (2) The gas utilization equipment is connected to a source of oxygen or compressed air.
- (3) Liquefied petroleum gas or other supplementary gas is used as standby and might flow back into the meter. A three–way valve installed to admit the standby supply and at the same time shut off the regular supply, can be substituted for a check valve if desired.
- (2) After 49 CFR s. 192.355 (b) (3), insert:
 - (4w) At locations where service regulators might be submerged during floods, either a special anti–flood type breather vent fitting shall be installed, or the vent line shall be extended above the height of the expected flood waters.
- PSC 135.226 49 CFR s. 192.361 Addition.** After 49 CFR s. 192.361 (f), insert:
 - (gw) It is recommended that service to one customer and/or one building be supplied through one service and one shut–off valve.
- PSC 135.227 49 CFR s. 192.365 Addition.** After 49 CFR s. 192.365 (b), insert:
 - (bw) Whenever gas is supplied to a theatre, church, school, factory or other building where large numbers of persons assemble, an outside valve in such case will be required.
- PSC 135.228 49 CFR s. 192.371 Addition.** After the text in 49 CFR s. 192.371, insert:
 - (aw) When coated steel pipe is to be installed as a service line in a bore, care should be exercised to prevent damage to the coating during installation. For all installations to be made by boring, driving or similar methods or in a rocky type soil, the following practices or their equivalents are recommended:
 - (1) When a service line is to be installed by boring or driving and a coated steel pipe is to be used for the service line, the coated pipe should not be used as the bore pipe or drive pipe and left in the ground as part of the service line. It is preferable to make such installations by first making an oversize bore, removing the pipe used for boring and then inserting the coated pipe.
 - (2) Coated steel pipe preferably should not be inserted through a bore in exceptionally rocky soil where there is a likelihood of damage to the coating resulting from the insertion.
- PSC 135.229 49 CFR s. 192.375 Addition.** After 49 CFR s. 192.375 (b), insert:
 - (cw) Plastic service lines that are not encased shall either be installed with an electrically conductive wire having adequate corrosion resistant characteristics or protection or some other acceptable means of readily locating the buried service pipe from the ground surface shall be provided.
- PSC 135.230 49 CFR s. 192.377 Additions.** After the text in 49 CFR s. 192.377, insert:
 - (aw) Copper service lines installed within a building may not be concealed.
 - (bw) Ferrous valves and fittings installed on underground copper service lines shall be protected from contact with the soil or insulated from the copper pipe.
- PSC 135.231 49 CFR s. 192.457 Addition.** After 49 CFR s. 192.457 (c), insert:
 - (dw) Notwithstanding the provisions of 49 CFR s. 192.457 (b) regarding active corrosion, effectively coated steel distribution pipelines, except for those portions including services and short sections that because of their nature and installation make cathodic protection impractical and uneconomical, must, not later than August 1, 1975, be cathodically protected along the entire area that is effectively coated in accordance with this subpart.
- PSC 135.232 49 CFR s. 192.505 Addition.** After 49 CFR s. 192.505 (e), insert:
 - (fw) Except in freezing weather or when water is not available, pipelines or mains larger than 6 inches in diameter, installed in class locations 1, 2, or 3, shall be hydrostatically tested in place to at least 90 percent of the specified minimum yield strength.
- PSC 135.233 49 CFR s. 192.511 Addition.** After 49 CFR s. 192.511 (c), insert:
 - (dw) Each segment of a service line (other than plastic) intended to be operated at a pressure between 0 and 1 p.s.i.g. must be given a leak test at a pressure of not less than 50 p.s.i.g.
- PSC 135.234 49 CFR s. 192.613 Additions.** After 49 CFR s. 192.613 (b), insert:
 - (cw) When street is paved or repaved. Whenever a road or street is paved or repaved with permanent pavement, the operator shall:
 - (1) Check for leaks along all mains and services in the streets and abutting property with a continuous–sampling instrument capable of detecting combustible gas in air concentrations of 100 parts per million.
 - (2) Determine condition of pipe and joints by sample visual examination, where possible.
 - (3) Repair any leaks found.
 - (4) Replace pipe if existing pipe is corroded to such an extent that it is likely to require replacement before the street is again resurfaced.
 - (dw) Underground pipes. Whenever underground pipes are exposed in order to repair leaks, the utility shall record on the repair order the nature of the leak and possible cause from observation.
- PSC 135.235 49 CFR s. 192.614 Addition.** After 49 CFR s. 192.614 (c), insert:
 - (dw) All operators of natural gas pipelines shall be a member of a single, state–wide one–call system. If there is more than one state–wide one–call system, the Commission may determine which system the operators will join.
- PSC 135.236 49 CFR s. 192.621 Additions.** (1) After 49 CFR s. 192.621 (a) (3), insert:
 - (3w) No person may operate a segment of a cast iron pipe in which there are unreinforced bell and spigot joints at a pressure higher than low pressure unless it can be proven to the commission that they can be operated at a higher pressure. However, the maximum allowable operating pressure under any circumstances shall not exceed 15 p.s.i.g.

(2) After 49 CFR s. 192.621 (b), insert:

(cw) Sixty p.s.i.g. in individual distribution systems or portions thereof. The intercity or supply mains for these distribution systems may be operated at higher pressures provided by this code if the number of services supplied from these mains are limited and these mains are not an integral part of the distribution system. The pressure and the services supplied from these higher pressure intercity and supply mains shall be limited to 60 p.s.i.g. unless the service lines are equipped with series regulators or other pressure limiting devices as prescribed in 49 CFR s. 192.197 (c).

PSC 135.237 49 CFR s. 192.623 Addition. After 49 CFR s. 192.623 (b), insert:

(cw) No person may operate a low pressure distribution system at a pressure in excess of that provided by s. PSC 134.23 (1).

PSC 135.238 49 CFR s. 192.629 Addition. After 49 CFR s. 192.629 (b), insert:

(cw) No pipeline, main, or service shall be purged into any building or confined space.

PSC 135.239 49 CFR s. 192.707 Addition. After 49 CFR s. 192.707 (d), insert:

(ew) When transmission lines are located outside urban areas, their location shall be marked (recognizable to the public) at each fence line, road crossing, railroad crossing, river, lake, stream, or drainage ditch crossing and wherever it is considered necessary to identify the location of a pipeline to reduce the possibility of damage or interference.

PSC 135.240 49 CFR s. 192.713 Addition. After 49 CFR s. 192.713 (a) (3), insert:

(4w) Gouges and grooves of lesser depth than 10% of the nominal wall thickness of the pipe may be removed by grinding out to a smooth contour provided the grinding does not reduce the remaining wall thickness to less than the minimum prescribed by this code for the conditions of use.

PSC 135.241 49 CFR s. 192.720w Addition. After 49 CFR s. 192.719, insert:

192.721w Repair of steel pipe operating below 40 percent of the specified minimum yield strength. If inspections at any time reveal an injurious defect, gouge, groove, dent, or leak, immediate temporary measures shall be employed to protect the property and public if it is not feasible to make permanent repair at time of discovery. As soon as feasible, permanent repairs shall be made using recognized methods of repair.

PSC 135.242 49 CFR s. 192.722w Addition. After 49 CFR s. 192.721, insert:

192.722w Distribution mains: markers. When distribution mains are located outside urban areas, their location shall be marked (recognizable to the public) at each fence line, road crossing, railroad crossing, river, lake, stream, or drainage ditch crossing and wherever it is considered necessary to identify the location of a pipeline to reduce the possibility of damage or interference.

PSC 135.243 49 CFR s. 192.723 Additions. After 49 CFR s. 192.723 (b), insert:

(cw) Every operator shall maintain a gas leak–detection program and shall maintain records of operation under the program. The program shall consist of not less than the following:

(1) In addition to 49 CFR s. 192.723 (b) (1), an additional leakage survey with a leak detection device shall be conducted over street openings in business districts (as shown by maps filed with the Commission by each utility) at intervals not exceeding 15 months, but at least once each calendar year and not more than 4 1/2 months before or after the survey required under 49 CFR s. 192.723 (b) (1).

(2) In each business district, a building survey shall be conducted at intervals not exceeding 15 months, but at least once each calendar year. The piping from the service entrance to the meter outlet and metering and regulating equipment shall be tested for gas leakage in those buildings that have gas service.

(3) A survey of all buildings used for public gatherings, such as schools, churches, hospitals, and theaters, shall be conducted at intervals not exceeding 15 months, but at least once each calendar year. The piping from the service entrance to the meter outlet and metering and regulating equipment shall be tested for gas leakage.

(4) In incorporated cities and villages, in addition to a survey of public buildings, the operator shall conduct a leak survey of all mains using a continuous–sampling instrument capable of detecting and measuring combustible gas in air concentrations of 100 parts per million. The utility may substitute for the test required by this provision a survey by mobile flame ionization or infrared gas detection units. The tests required by this provision shall be made at intervals not exceeding 15 months, but at least once each calendar year.

(5) Along all mains in unincorporated areas, a leakage survey with leak detection equipment shall be conducted at least once every two calendar years at intervals not exceeding 27 months.

(6) A leakage survey of all services conducted with an acceptable leak detection device shall be made at intervals not exceeding five years.

(7) When a leak complaint is received and the odor of gas indicates that there is a leak in or near the premises, a search shall be carried to conclusion until the leak is found.

PSC 135.244 49 CFR s. 192.724w Addition. After 49 CFR s. 192.723, insert:

PSC 192.724w Further leakage survey after repair of leak. When a leak is found and repaired, a further check shall be made in the vicinity of the repaired leak to determine if there is any other source of migrant gas in the neighborhood.

PSC 135.245 49 CFR s. 192.727 Addition. After 49 CFR s. 192.727 (f), insert:

(gw) Special efforts shall be made to include services which have not been used for ten years in a way that will remove gas from the customers' premises. The plan shall include the following provisions:

(1) If the facilities are abandoned in place, they shall be physically disconnected from the piping system. The open ends of all abandoned facilities shall be capped, plugged, or otherwise effectively sealed.

(2) In cases where a main is abandoned, together with the service lines connected to it, insofar as service lines are concerned, only the customers' end of such service lines need be sealed as stipulated above.

(3) Until the time a service is abandoned, it shall be treated as active for purposes of applying the regulations of 49 CFR s. 192. If a service line is not treated as an active line, it shall be physically disconnected at the main and purged, no later than 2 years after becoming inactive.

(4) Services that are inactive for more than two years shall be physically disconnected from the customer's piping.

PSC 135.246 49 CFR s. 192.735 Addition. After 49 CFR s. 192.735 (b), insert:

(cw) All aboveground oil or gasoline storage tanks shall be constructed and protected in accordance with the applicable codes of the Department of Commerce.

PSC 135.247 49 CFR s. 192.741 Addition. After 49 CFR s. 192.741 (c), insert:

(dw) Each low pressure distribution system must be equipped with telemetering or recording pressure gage or gages as may be required to properly indicate the gas pressure in the system at all times. At least once each year the pressure variation shall be determined throughout each system.

PSC 135.248 49 CFR s. 192.744w Addition. After 49 CFR s. 192.743, insert:

PSC 192.744w Service regulators and associated safety devices: inspection and testing. Company service regulators and associated safety devices on customers' premises shall be inspected and tested periodically to determine whether they are in proper operating condition. This shall include testing of the set pressure of the regulator at a specific flow rate, determination of the lock-up pressure, and determination as to whether there are any leaks, internal or external, associated with the regulator. The test interval shall be the same as the interval between meter changes in the meter rotation program, s. PSC 134.30.

PSC 135.249 49 CFR s. 192.747 Addition. After the text in 49 CFR s. 192.747, insert:

(aw) Inspection shall include checking of alignment to permit use of a key or wrench and clearing from the valve box or vault any debris which would interfere or delay the operation of the valve. Records shall be maintained to show specific valve location and such records shall be made continuously accessible to authorized personnel for use under emergency conditions.

(bw) Existing connections in the form of inline valves between low pressure gas distribution systems and high pressure gas distribution systems shall be physically severed by January 1, 1974.

(cw) The by-pass valves in district regulator stations supplying gas to a low pressure distribution system shall be sealed, locked or otherwise be rendered incapable of operation, except by authorized personnel by January 1, 1974.

PSC 135.250 49 CFR s. 192.751 Addition. After 49 CFR s. 192.751 (c), insert:

(dw) Whenever the accidental ignition in the open air of gas-air mixture might be likely to cause personal injury or property damage, precautions shall be taken as, for example:

- (1) Prohibit smoking and open flames in the area.
- (2) Install a metallic bond around the location of cuts in gas pipes to be made by other means than cutting torches.
- (3) Take precautions to prevent static electricity sparks.
- (4) Provide fire extinguishers of appropriate size and type in accordance with Department of Commerce requirements.

PSC 135.251 49 CFR s. 192.753 Addition. After 49 CFR s. 192.753 (b), insert:

(cw) Existing unreinforced bell and spigot jointed cast iron pipe shall be operated at low pressure unless it can be proved to the Commission that they can be satisfactorily operated at a higher pressure. However, the operating pressure under any circumstances shall not exceed 15 p.s.i.g.

Fiscal Estimate

The Commission anticipates that there will be no fiscal impact of the proposed rules on state or local units of government.

Initial Regulatory Flexibility Analysis

The proposed rules do not affect small businesses as defined in s. 227.114, Stats. The rules incorporate into the Wisconsin Administrative Code federal pipeline safety regulations that are already applicable to pipeline operators in this state.

Environmental Analysis

This is a Type III action under s. PSC 4.10(3). No unusual circumstances suggesting the likelihood of significant environmental consequences have come to the Commission's attention. Neither an environmental impact statement under s. 1.11, Stats., nor an environmental assessment is required.

***NOTICE OF SUBMISSION OF PROPOSED RULES TO THE PRESIDING OFFICER OF EACH HOUSE OF THE LEGISLATURE,
UNDER S. 227.19, STATS.***

Please check the Bulletin of Proceedings for further information on a particular rule.

Agriculture, Trade and Consumer Protection (CR 98-118):
Ch. ATCP 30 Appendix A – Relating to atrazine use restrictions.

Veterans Affairs (CR 98-165):
S. VA 2.01 (2) (b) 2. – Relating to the expenditure limitation for dentures under the health care aid grant program.

ADMINISTRATIVE RULES FILED WITH THE REVISOR OF STATUTES BUREAU

The following administrative rules have been filed with the Revisor of Statutes Bureau and are in the process of being published. The date assigned to each rule is the projected effective date. It is possible that the publication of these rules could be delayed. Contact the Revisor of Statutes Bureau at (608) 266-7275 for updated information on the effective dates for the listed rules.

Commerce (CR 98-99):

An order affecting s. Comm 2.35 and ch. Comm 67, relating to rental unit energy efficiency standards.
Effective 03-01-99.

Commerce (CR 98-100):

An order repealing ch. ILHR 32 and creating ch. Comm 32, relating to public employee safety and health.
Effective 03-01-99.

Commerce (CR 98-103):

An order affecting ss. Comm 16.50, 54.07 and 64.45 and chs. Comm 51, 52, 56 and 58, relating to an update of adopted National Fire Protection Association (NFPA) standards in the Building Code.
Effective 03-01-99.

Health and Family Services (CR 97-47):

An order creating ch. HFS 127, relating to the operation of rural medical centers.
Effective 03-01-99.

Health and Family Services (CR 98-108):

An order repealing and recreating ch. HFS 119, relating to the Health Insurance Risk-Sharing Plan (HIRSP).
Effective 02-01-99.

Health and Family Services (CR 98-134):

An order affecting ch. HFS 124, relating to critical access hospitals.
Effective 02-01-99.

Natural Resources (CR 98-42):

An order creating ch. NR 749, relating to the assessment and collection of fees for providing assistance on the remediation and redevelopment of contaminated lands.
Effective 03-01-99.

Natural Resources (CR 98-73):

An order affecting chs. NR 191 and 192, relating to lake protection and classification grants and lake classification technical assistance grants.
Effective 03-01-99.

Public Instruction (CR 98-112):

An order affecting ch. PI 35, relating to the Milwaukee parental school choice program.
Effective 03-01-99.

Public Instruction (CR 98-113):

An order creating ch. PI 38, relating to grants for peer review and mentoring.
Effective 03-01-99.

Railroads, Commissioner of (CR 97-83):

An order affecting ch. RR 1, relating to procedures and practices of the Office of the Commissioner of Railroads.
Effective 03-01-99.

Railroads, Commissioner of (CR 97-84):

An order repealing ch. RR 3, relating to railroad ratemaking.
Effective 03-01-99.

Revenue (CR 98-67):

An order affecting s. Tax 11.56, relating to the printing industry.
Effective 03-01-99.

PUBLIC NOTICE

Public Notice *Public Service Commission*

1-AC-181

Administrative Rules Regarding Various Dispute Resolution Procedures Under Federal and State Law

NOTICE OF INVESTIGATION AND FURTHER DEVELOPMENT OF RULES PHASE 2

Analysis:

The federal Telecommunications Act of 1996 (Act) and 1993 Wis. Act 496 established the requirement that telecommunications service providers negotiate agreements with competitors which allow the competitors to interconnect with or use the provider's facilities and services in order for the competitors to provide telecommunications services to their customers. The Act also established procedures for negotiation, arbitration, and approval of agreements. Among other duties and responsibilities, state commissions were mandated to mediate, arbitrate, and approve interconnection agreements under the Act. Courts have held, and s. 196.199 (2) (a), Stats., created by 1997 Wis. Act 218 and effective January 1, 1999, provides that the state also has the right to enforce existing agreements. As part of its enforcement power, the Commission may investigate whether a party to an interconnection agreement has failed to comply with the agreement.

On May 23, 1996, the Commission issued its Interim Procedures for Negotiations, Mediation, Arbitration, and Approval of Agreements (Interim Procedures) to implement interstate participation in developing competitive local exchange markets, as contemplated by the Act. The Commission recognized that, when these Interim Procedures were implemented, they would need to be modified based on the Commission's experience and then codified into permanent rules.

Section 196.219 (5), Stats., requires that the Commission develop rules establishing a procedure for Alternate Dispute Resolution (ADR) in cases involving complaints filed against a telecommunications utility or provider. Additionally, 1997 Wis. Act 218 allows the Commission to develop rules requiring that interconnection agreements include ADR provisions (s. 196.199 (2) (b), Stats.). 1997 Wis. Act 218 also requires that the Commission develop rules establishing standards and procedures for shortening a required 5-day controversy resolution opportunity (s. 196.199 (3) (b) 2., Stats.).

At its open meeting of May 5, 1998, the Commission approved a Statement of Scope proposing the development of rules regarding various dispute resolution procedures under federal and state law. The objective of the proposed rules is to implement the Commission's federal and state statutory authority to resolve various disputes between telecommunications providers and their customers.

Also mandated by 1997 Wis. Act 218 (s. 196.199 (2) (c), Stats.), an earlier rule addressed the related issue of whether an alleged failure to comply with an interconnection agreement has a significant adverse effect on another party to the agreement. (See Notice of Hearing in this docket, available under "Telecommunications Industry Notices" at www.psc.state.wi.us/notices/ind-no98.htm.) The Commission is now preparing to develop permanent rules about the remaining areas concerning alternate dispute resolution.

Input Expressly Invited:

The Commission specifically invites telecommunications providers and interested others to provide comments and information concerning this proceeding. Interested persons may consider the Interim Procedures and Statement of Scope as starting points for further discussion. (See Interim Procedures available at

www.psc.state.wi.us/writings/papers/tele/intproc.htm and Statement of Scope available at www.legis.state.wi.us/rsb/code/register/reg509b.pdf.) Among the topics about which interested parties may wish to comment or provide information are:

- * Expectations concerning the rules specified in 1997 Wis. Act 218.
- * The desirability and feasibility of ADR and expedited arbitration procedures and how processes could be changed to allow for faster resolution while still providing adequate due process.
- * Alternate dispute resolution (ADR), expedited arbitration, or similar procedures established by other states.
- * Whether the Interim Procedures should be modified and, if so, how.
- * How the factors for determining “substantial adverse effect” (for purposes of injunctive relief under s. 196.199 (3) (e) 2., Stats., as created by 1997 Wis. Act 218) should differ from the factors for determining “significant adverse effect” (for purposes of expediting the process under s. 196.199 (3), Stats., as created by 1997 Wis. Act 218).

Environmental Analysis:

This is a Type III action under s. PSC 4.10 (3), Wis. Adm. Code. No unusual circumstances suggesting the likelihood of significant environmental consequences have come to the Commission’s attention. Neither an environmental impact statement under s. 1.11, Stats., nor an environmental assessment is required.

Submitting Comments:

Due Dates:

Written Comments Due: **February 16, 1999, by Noon**

FAX Comments Due: **February 15, 1999, by Noon**

Address Comments To:

Lynda L. Dorr, Secretary to the Commission
Public Service Commission
P.O. Box 7854
Madison, WI 53707–7854

Fax No. (608) 266–3957

Written Comments:

Notice is hereby given that written comments and suggestions may be submitted until **noon on February 16, 1999 (February 15, 1999, by noon, if filed by fax)**. All written comments must include a reference on the filing to: **docket 1–AC–181 Phase 2**. File by one mode only.

If filing by mail, courier, or hand delivery:

Address comments to:

Lynda Dorr, Secretary to the Commission
Public Service Commission
610 North Whitney Way (53705)
P.O. Box 7854
Madison, WI 53707–7854

Industry parties should submit an original and 15 copies. Members of the public need only file an original. File by **February 16, 1999, at noon**.

FAX Comments:

If filing by fax:

Send fax comments to:

FAX number (608) 266-3957

Address comments to:

Lynda Dorr, Secretary to the Commission

Fax filing cover sheets MUST state “**Official Filing**,” the docket number (**1-AC-181 Phase 2**), and the **number of pages** (limited to 20 pages for fax comments). File faxes by **February 15, 1999, at noon**.

Contact Information:

Questions regarding this matter should be directed to:

Nick Linden, Assistant Administrator
Telecommunications Division
Telephone (608) 266-8950, or
by email at: linden@psc.state.wi.us

Hearing— or speech-impaired individuals may also use the Commission’s TTY number, (608) 267-1479.

The Commission does not discriminate on the basis of disability in the provision of programs, services, or employment. Any person with a disability who needs accommodations to participate in this proceeding or who needs to get this document in a different format should contact Nick Linden, as indicated in the previous paragraph, as soon as possible.

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